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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~205~~ 46

JOHANNES JERKER, XAVER HAVER, JOHANNA HAVER, FRANZ HAVER, JOHANN RUMPEL, AND JACOB RUMPEL, HEIRS OF PETER YAGER OR YAKER, DECEASED, PLAINTIFFS IN ERROR,

vs.

DEAN MAGEE, ADMINISTRATOR, AND JANE YAGER, WIDOW OF PETER YAGER OR YAKER, DEC'D.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

Filed

FILED DECEMBER 10, 1852

Dec 1st July 1853 —

Jas Davis —

SUPREME COURT OF THE UNITED STATES.

No. 205.

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To the Hon. Noah H. Swayne, associate justice of the Supreme Court U. S.

The petition of Johannes Jeeker, Xaver Haver, Johann Haver, Franz Haver, Johann Rumpel, and Jacob Rumpel, aliens, citizens of Switzerland, residing in that republic.

That there was error to their manifest injury in a certain final decree made and rendered by the Court of Appeals of the State of Kentucky, in a certain cause in the said court heretofore pending, wherein the said State of Kentucky was originally complainant, and were originally defendants, in which said suit the said State of Kentucky claimed certain lands and other property, which were of one Peter Yaker's, in his lifetime, then deceased, which said lands and property were therein claimed to have escheated to the said State; in which said suit your petitioners became, and by the order of said court on their petition were made, parties, and in which suit the final decree of said court was against the said State, and no appeal has been taken therefrom, but the same decree was likewise against your petitioners, who were the heirs and next of kin of the said deceased, and who claimed, under the treaty between the U. S. and the said republic of Switzerland, the right to inherit from the said deceased and to share in the distribution of his personal estate, their alienage notwithstanding, which right was denied to them by the decree of the said court, which was in favour of the said Dean Magee, adm'r, and Jane Yager, widow of the said Peter Yager, dec'd, whereupon these petitioners prayed an appeal to the Supreme Court of the U. S., which was allowed.

But forasmuch as the said alleged error can only be corrected by writ of error, and forasmuch as a writ of error lies in said case to the said Court of Appeals, the same being the highest court in which the question of your petitioners right could be decided, they pray your honors to allow said writ, and a citation to the said Dean Magee, adm'r, and Jane Yager, widow of Peter Yager, dec'd, to appear before the Supreme Court of the U. S. at its next term, to answer to said writ, &c., and they will ever pray, &c.

J. M. CARLISLE,
Att'y of Com., for Pet'r's.

11 Feb., 1867.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable judges of the Court of Appeals of the Commonwealth of Kentucky, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Court of Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Commonwealth of Kentucky, appellant, and Dean Magee, adm'r, Jane Yager, widow, and Johannas Jecker, Xaver Haver, Johann Haver, Franz Haver, Johann Rumpel and Jacob Rumpel, heirs of Peter Yager or

Yaker, deceased, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in ques-
6 tion the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Johannas Jeeker, Xaver Haver, Johann Haver, Franz Haver, Johann Rumpel, and Jacob Rumpel, heirs as aforesaid, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first of December, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

7 THE UNITED STATES OF AMERICA:

To Dean Magee, administrator, and Jane Yager, widow of Peter Yager or Yaker, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the Commonwealth of Kentucky, wherein Johannes Jeeker, Xaver Haver, Johann Haver, Franz Haver, Johann Rumpel, and Jacob Rumpel are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why a decree rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

On this 28th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, personally appeared Henry Diven, before me, the subscriber, a commissioner of the Circuit Court of the United States for the district of Kentucky, and makes oath that he delivered a true copy of the within citation to Dean Magee, on the 26th day of Novemb., 1867.

Jane Yeager is dead.

HENRY DIVEN,
Special bailiff for W. A. Meriwether, U. S. Marshal, K. D.

Marshal's fees.

1 summon	50
Mileage from Washington city to Frankford co., K'y, 840 miles	50 40
	$50 90

Sworn to and subscribed the 28th day of November, A. D. 1867.

[SEAL.] A. J. BALLARD,
U. S. Com'r, K. D.

8 Know all men by these presents that we, John Hitz and H. Mitzerott, of Washington city, Dist. of Columbia, are held and firmly bound unto Dean Magee, adm'r, and Jane Yager, widow of Peter Yager, deceased, in the full and just sum of three hundred dollars, to be paid to the said Dean Magee, adm'r, and Jane Yager, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas lately, at a Court of Appeals of the Commonwealth of Kentucky, in a suit depending in said court between the Commonwealth of Kentucky, appellant, and Dean Magee, adm'r, Jane Yager, widow, and Johannes Jecker, Xaver Haver, Johann Haver, Franz Haver, Johann Rumpel, and Jacob Rumpel, heirs of Peter Yager or Yaker, deceased, was rendered against the said Johannes Jeeker *et al.*, and the said Johannes Jeeker *et al.* having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Dean Magee, adm'r, and Jane Yager, widow of Peter Yager or Yaker, dec'd, citing and admonishing to be and appear at a Supreme

Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said Johannes Jeeker *et al.* shall prosecute their writ of error to effect, and answer all damages and costs, and if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] JOHN HITZ.
[SEAL.] H'Y METZEROTT.

Sealed and delivered in presence of—

Approved by—

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

STATE OF KENTUCKY, *Court of Appeal:*

I, Alvin Duvall, clerk of the Court of Appeals for the State of Kentucky, do certify that the foregoing is a true and correct copy of the original bond on file in my office.

Witness my hand and the seal of my office this 3d day of December, 1867.

[SEAL.] A. DUVALL, *C. C. A.*

9 UNITED STATES OF AMERICA.
District of Kentucky, ss:

The President of the United States of America to the judge of the Court of Appeals of Kentucky:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you between the Commonwealth of Kentucky, plaintiffs, against Dean Magee, adm'r of Peter Yager or Yaker, dec'd, Jane Yager, widow of Peter Yager, dec'd, and the unknown heirs and distributees of said Peter Yager, dec'd, a manifest error hath happened to the great damage of the heirs of Peter Yager or Yaker, dec'd, as by their complaint appears; and it being fit that the error, if any there hath been, should be dully corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States at Washington city, together with this writ, so that you have the same at the Supreme Court aforesaid on the first day of our next Dec'r term, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Belvard J. Peters, chief justice of the State, and the seal of said court, at Frankfort, in said State, this fifth day of

February, A. D. 1867, and of the independence of the United States the ninety-first.

[SEAL.]

B. J. PETERS,
Chief Justice of Kentucky, C. C. C. K. D.

10 UNITED STATES OF AMERICA,
State of Kentucky, Court of Appeals:

At a Court of Appeals of the State of Kentucky, held at the capitol in Frankfort, on the fifth day of February, 1867, and in the 76th year of the Commonwealth, and of the independence of the United States the ninety-first.

Present, Peters, chief justice, Williams, Robertson, and Hardin, judges.

Be it remembered that heretofore, to wit, on the 5th day of February, 1867, the following order was entered in the words and figures following:

Appeal from the Woodford Circuit Court.

THE HEIRS OF PETER YAGER OR YAKER, deceased,
vs.
DEAN MAGEE, adm'r of PETER YAGER OR Yaker, and Jane Yaker, widow of Peter Yaker, and the unknown heirs and distributees of said Peter Yager, dec'd.

11 Came R. A. Buckner, esq., and presented a complete copy of the record in [in] this cause, which was duly certified by the commissioner of this court, to supply burnt records, as a correct copy; and the court, being satisfied that said copy is correct and complete, it is ordered that the same be filed by the clerk of this court in his office as a substitute for said original record, which is done.

The following is a copy of the record referred to in the foregoing order:

12 STATE OF KENTUCKY, *Woodford Circuit Court:*

Pleas before the honorable William C. Goodloe, judge of the Woodford Circuit Court, on the 6th day of April, 1860, in the town of Versailles, Woodford county, Kentucky.

THE COMMONWEALTH OF KENTUCKY, pl'ff,
vs.
DEAN MAGEE, adm'r, &c., def'ts.

Be it remembered that heretofore, to wit, on the 28th day of February, 1859, the pl'ff, by her attorney, filed here in the clerk's office of the court aforesaid her petition, in the words and figures following, viz:

Woodford Circuit Court.

Petition in equity.

THE COMMONWEALTH OF KENTUCKY, pl'ff,
vs.
DEAN MAGEE, adm'r of PETER YAGER AND Jane Yager, widow of Peter Yager, dec'd, and the unknown heirs and distributees of said Peter Yager, dec'd, def'ts.

The Commonwealth of Kentucky, by Thos. N. Lindsey, agent, employed by the auditor of public accounts, states that Peter Yager was an alien, born out of the United States; that he resided for many years in Woodford county, Kentucky, and died there more
13 than five years ago, and the said Dean Magee administered on his estate; def't, Jane Yager, was the wife of said Peter, and now surviving him. During his life, and while residing in said Woodford county, he became the owner in fee of a tract of land containing about 342 acres, the same on which said widow has resided ever since the death of said Peter, and still resides. He also left a considerable estate in negroes, stock, money, choses in action, and other personal estate, worth between eight and nine thousand dollars. The pl'ff charges, that for want of heirs authorized by the laws of Kentucky to take title to the real estate, the same has escheated to the pl'ff, subject, perhaps, to the right of s'd widow to dower; that the kindred, who, if native-born or naturalized, of said Peter Yager, who would be his heirs, and are, perhaps, entitled to distribution of his personal estate, or to one-half thereof—the said Peter never having had a child or children—are, as pl'ff is advised, all aliens and residents out of the United States, and though more than five years have elapsed since administration was had in the County Court of Woodford county, where said Peter was domiciled at
14 his death, none of said heirs and distributees, whose names are unknown, have applied for any distribution or share in the distribution of said Peter Yager's estate.

The pl'ff, in view of the foregoing facts, calls upon the said adm'r for a full and complete exhibit of the entire estate that came to his hands; prays that a comm'r be appointed to settle with said adm'r; that the dower of said widow be set apart to her, and her share in the distributable estate be set apart, and that the balance be adjudged to pl'ff and be required to be paid over to the pl'ff, or her agent and att'y, and that all relief, general or special, the case may require, be granted.

THE COMMONWEALTH OF KY.
By TH. N. LINDSEY, *Agent & Att'y.*

Th. N. Lindsey says that he is the agent and att'y authorized by the auditor of public accounts to bring this suit to recover the estate named in the petition, and he says he believes the statements of the

foregoing petition to be true He states further, that the names of the next of kin to Peter Yager, sued as unknown heirs and dis-
15 tributees, are unknown to him.

THO. N. LINDSEY.

Sworn to by Th. N. Lindsey before the undersigned examiner of Franklin county, Feb'y 25, 1859, at Frankfort, Franklin county, [co.] Kentucky.

W. FRANKLIN, *E. F. C.*

Woodford Circuit Court.

THE COMMONWEALTH OF KENTUCKY, *pl'ff*,
against
DEAN MAGEE, adm'r of PETER YAGER, and Jane Yager and others, *def'ts*.

The def'ts, the unknown heirs and distributees of Peter Yager, dec'd, are warned to appear in this court on the first day of its next October term and answer the petition of the pl'ff, the Commonwealth of Kentucky; and Sam'l Gray is appointed attorney to defend for said unknown heirs and distributees.

Feb'y 28, 1859.

SWIFT DARNEAL, *C. W. C. C.*

The Commonwealth of Kentucky to the Sheriff of Woodford county, greeting:

You are commanded to summon Jane Yager, widow of Peter Yager, dec'd, and the unknown heirs and distributees of said Peter Yager, to answer in twenty days after the service of this summons on them a petition filed against them in the Woodford Circuit
16 Court by the Commonwealth of Kentucky, and warn them that upon their failure to answer the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next April term of said court.

Witness Swift Darneal, clerk of said court, this 28th day of February, 1859.

SWIFT DARNEAL, *C. W. C. C.*

Executed on the within-named Jane Yager March 1st, 1859, by delivering to her a true copy of the within.

WM. W. GEORGE, *S. W. C.*

Sum's to Jessamine.

Summons, as above, directed to the sheriff of Jessamine county, for Dean Magee, adm'r of Peter Yager, dec'd, issued 28 Feb'y, 1859, came to hand March 2, 1859, at 6 o'clock, p. m.; executed on Dean Magee, March 7, 1859, by delivering him a copy of the within.

W. H. HUGGINS, *D. S.*
For L. H. CHRISMAN, *S. J. C.*

And afterwards, to wit, at a court began and held as aforesaid, on the 6th day of April, 1859.

This day come the def'ts, Dean Magee and [and] Jane
17 Yaker, and filed their separate answers to pl'ff's petition.

Woodford Circuit Court.

Order filing answers.—Answer of Dean Magee.

COMMONWEALTH OF KENTUCKY, *pl'ff*,
against
DEAN MAGEE, ix'd and others, *def'ts.*

The def't, Dean Magee, for answer says that he was appointed adm'r of the estate of Peter Yager, dec'd, and has duly administered upon it. He settled with the Woodford County Court for his administration. The estate amounted to $13,609 25, and the credits to $2,439 31, leaving a balance of $11,169 94, as a credit to s'd estate. He considered that one-half of said balance belonged to Jane Yager, the widow of decedent, and the other half to his nearest kindred by blood, if any such are living, or were living at his death, and if there were none living that said half belonged to said widow as distributee.

He admits that Peter Yager has been dead more than five years, he having died on 30th July, 1853. He prays the court to ascertain whether there are any living kindred entitled to receive the half of the personal estate, and if not that the amount be ordered to
18 be paid to Jane Yager, as the distributee, according to law.

The administration is not fully completed, there being some collections yet to make, and some debts to pay, not in settlement.

M. C. JOHNSON.

WOODFORD COUNTY:

Dean Magee says he believes the statement of the foregoing answer are true.

DEAN MAGEE.

Sworn to before me by Dean Magee, 6 April, 1859.

SWIFT DARNEAL, *C. W. C. C.*

Woodford Circuit Court.

Answer of Jane Yager.

COMMONWEALTH OF KENTUCKY, *plaintiff*,
against
DEAN MAGEE, adm'r, and others, *def'ts.*

The def't, Jane Yager, says that it is true that she was the wife and is now the widow, of Peter Yager, dec'd. It is also true that Peter Yager was an alien, born out of the United States, but had

been during his lifetime regularly naturalized, according to the laws of the United States, and at the time of his death was a citizen of the State of Kentucky. Before naturalization he was a citizen of Switzerland, and he resided more than five years before his
19 death in the State of Kentucky. It is true that said Yager has been dead more than five years. At his death he was the owner in fee simple of a tract of land in Woodford, which is now in the possession of this def't as his heir-at-law. It is true that he has no other kindred than this def't capable of inheriting said real estate; but she claims that she is the sole heir of all his real estate, and that it all belongs to her as his heir. Peter Yager died on the 30th July, 1853. She farther states that Dean Magee has administered on Peter Yager's personal estate. She claims one half of his said estate as his widow, and if it shall not appear that there are other kindred of her husband living, she claims the other half as his heir or distributee; and she therefore prays that the estate be delivered to her until it shall be shown that there are others who, by law, are entitled before her. She files herewith Peter Yager's naturalization papers.

M. C. JOHNSON & PORTER.

WOODFORD COUNTY, *ss:*

20 Jane Yaker states that she believes the statement in the foregoing answer are true.

JANE YAKER.

Sworn to before me by Jane Yaker this 5th April, 1859.

SWIFT DARNEAL, *C. W. C. C.*

Peter Yaker's naturaliz'n papers.

STATE OF KENTUCKY, *City of Lexington, set:*

LEXINGTON CITY COURT,
August 2, 1845.

Present: Hon. George R. Trotter, judge, Peter Yaker, late a subject of the Republic of Switzerland, who took the preparatory oath of naturalization in Woodford Circuit Court, held in Versailles, Kentucky, on the 6th day of March, 1835, came into court and made it appear to the satisfaction of the court, that he has resided in the United States of America for the last five years, and in the State of Kentucky for more than two years, and that during that time he has behaved as a man of good moral character, is attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; whereupon the said Peter Yaker made oath that he would support the Constitution
21 of the United States, and the constitution of the State of Kentucky, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every potentate, State, or sovereignty whatever, and particularly to the Republic of Switzerland, of whom he was last a subject. And thereupon the said Peter Yaker is admitted a citizen of the United States of America.

STATE OF KENTUCKY, *City of Lexington, sct:*

I, R. B. Parker, clerk of the Lexington City Court, do hereby certify that the foregoing order is truly copied from the records of the same in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Lexington, this 2d day of August, 1845, and in the 54th year of the Commonwealth.

[SEAL.] R. B. PARKER, *Clerk.*

Order filing answer—Johannees Jeeker.

And afterwards, to wit. at a court began and held as aforesaid, on the 3d day of October, 1859.

This day came Johannes Jeeker, by her attorney, and filed her answer herein.

Woodford Circuit Court.

22 *Answer of Johannes Jeeker.*

STATE OF KENTUCKY, plff.,
vs.
McGEE, adm'r of Peter Yaker, and others, def'ts.

Petition and answer.

To the honorable Circuit Court of Woodford County, State of Kentucky:

The undersigned petitioner, Johannes Jecker of Barschival, canton Solthiuns, Switzerland, Xaver Haver, Johann Haver, Franz Haver, Johann Rumpel and Jacob Rumpel of Dornach, same canton, beg leave to state to this honorable court, that they are connected with the late Peter Yaker of the County of Woodford, and State of Kentucky, as follows: Your petitioner Johannes Yeeker is his brother, both he and the said Peter Yaker being born of the same parents; Peter and Maria Ann Jeeker in the canton Solothinen, Switzerland. There was also one other child born of the same parents, to wit, Magdalena; their father and mother are both dead, the former died October 24th 1848, the latter Febr'y 42th, 1814; the said
23 Magdalena also died April 12th, 1846, but not until she had intermarried with Franz Haver from Dornach, canton Solothum, by whom she had four children, to wit, your petitioners, Xavier, Johnnn, and Fraz Haver, and a daughter Maria Anna Haver, the last of whom died April 11, 1853, but not until she married with Josef Rumpel of Dornach, by whom she had two children, your petitioners, Johann and Jacob Rumpel, who are minors, and who file this petition by their nearest relative and guardian, Josef Rumpel. Your petitioners state that the late Peter Jecker or Yaker was a son of the said Peter and Maria Anna Jecker from Barschivil, canton Solothurn, Switzerland;

that he was born on the 22nd of January, 1806, and emigrated to the United States of America, in the year 1831, and resided in the county of Woodford, State of Kentucky, for a number of years before his death which occured * * * * * *
that his family name in Europe was Jeeker, whilst he was known in
Kentucky by the name of Yaker, as will appear from a letter
24 written by himself to his father and brother, dated March 25,
1849. A copy of this letter certified January 25, 1855, by the United States Consul at Basle, Switzerland, was immediately transmitted with other documents to John Smidt & Co., of Louisville, Kentucky, our accredited agents; other portions of the correspondence between the said Peter Jeeker or Yaker and his family in Europe were found among his papers at his death, copies of which rendered into English will also be filed herewith. Your petitioner further state that they have always understood that the said Peter Jecker or Yaker left a wife but no decendants at his death; that he died possessed of a large estate partly in lands and houses, partly in slaves and partly in other personalty; and that he died without leaving a last will and testament. Your petitioners are advised, that by the laws of the State of Kentucky the widow of said Peter Jecker or Yaker is entitled to one-third of the real estate for life; the one-
third of the slaves also for life, and to one-half of his other per-
25 sonal estate absolutely. The residue of his estate, by the same
laws of Kentucky, petitioners are advised belongs to them as nearest relatives of said Peter Jeeker or Yaker, who also, after the death of said widow, will be lawfully entitled to that portion inherited by her for life.

Johannes Jeeker, brother of the deceased Peter Jeeker or Yaker, being entitled to the one-half, and the children and the grand children of said Magdelena, sister of the said Peter, to the other half thereof; your petitioner further say, that they are all non-residents of the State of Kentucky, never have been within its limits and are aliens, citizens of Switzerland in Europe; they declare that they are the only relatives of said Peter Jeeker or Yaker, who died in Woodford county, State of Kentucky, as above stated, and claim as such their right of inheritance, further secured by article 5 of treaty between the United States and Switzerland, rat., November 8, 1855, to which they would particularly solicit the attention of the honorable court.

Your petitioners further state, that they have been informed
26 through their agent that the State of Kentucky, by her agent,
has instituted suit in the Woodford Circuit Court, making the widow of said Peter Jeeker or Yaker, his adm'r and unknown heirs, defendants, "to escheat all the estate of the said Peter Jeeker or Yaker, except one-third of the land for the life of the widow, and one-half of the personaly absolutely under the plea for lack of heirs capable of taking and holding property in Kentucky," which suit is now pending in court.

Petitioners are furtber informed, that to this the widow (of said Peter Yaker) has made answer, saying that she is entitled to the entire real estate and a portion of the personalty of said Peter Jeeker

or Yaker, but that she is perfectly willing for his heirs to have what is coming to them under and by virtue of the statutes of Kentucky. Your petitioners deny that under the provisions of the above-named treaty the State of Kentucky is entitled to any portion of the said Peter Jeeker or Yaker's estate; they further deny the widow of said
Peter Yecker is entitled to more than one-third of the real
27 estate for life, to one third of the slaves for life, and to one-half of the other personalty absolutely.

Petitioners therefore pray that the pl'ff be dismissed and her claim be denied; that the claims of the widow be modified to accord with the claims and rights of petitioners, in virtue of said treaty; that the honorable court may declare a just and equitable distribution of the entire estate of said Peter Jeeker or Yaker, with a due regard to the incontestable rights of petitioners, and accord to them "such terms as the laws of the State of Kentucky will permit to sell such property" (art. 5 treaty). They further pray that settlement may be made of the accounts in the hands of the administrator, and that the true amount thereof coming to the heirs be paid over to them.

Petitioners prays that this may be filed in said suit; that they may by names, become defendants thereto, and that it may be taken and received as their answer to the claim set up by the State of Kentucky, and the claim of the widow of said Peter Jeeker or Yaker. Offi-
28 cial and certified copies of the births, marriages and deaths of brother, father, and mother and sister (and the descendants of the latter) of the said Peter Jeeker or Yaker, of Woodford county, State of Kentucky, showing their several connections with him, will be herewith filed as part of this petition and answer. They pray for general and special relief and to such equity as they may be entitled.

We, the undersigned, Johannes Jeeker, Xavier Haver, Johann Haver, Franz Haver, and Josef Rumpel, believe the statements of the foregoing answer to be true.

(Signatures opposite.)

Witness:

Personally appeared before the undersigned notary and district clerk of the district Dornach, canton Solothurn, Switzerland, Johannes Jeeker, Xaver Haner, Johann Haner, Franz Haner, and Josef Rumpel, and made oath that the statements contained in the foregoing petitions are to the best of their knowledge true.

Given and sealed at Dornach the 30th day of the month of
29 August, in the year of our Lord one thousand eight hundred and fifty-nine.

(Aug. 30, 1859.)

(Signed opposite.)

CONSULATE OF THE UNITED STATES OF AMERICA,
Basle, Switzerland.

I, John Endlich, consul for the United States of America at Basle, Switzerland, do hereby certify that the above is the true and genuine signature and official seal of B. Roch, notary and district clerk of the

district Dornach, canton Solothum, Switzerland, and as such is entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and consular seal this 31st day of August, one thousand eight hundred and fifty-nine. (Aug. 31, 1859.)

[SEAL.] JOHN ENDLICH,
U. S. Consul.

Translation of a certified copy of a letter of Peter Jecker, (Yaker,) Versailles, to his father and brother in Switzerland.

Letter of Peter Yaker to his father and brother.

VERSAILLES, *March* 25, 1859.

DEAR FATHER AND BROTHER: I sit down to write you a few lines how I thrive in Amerika. I am in good health and my wife
30 also, hence we both enjoy the best health at this date, and all my subordinates—my slaves.

Dear father, I like to hear from you whether you are all alive yet or not, because I have written already two letters and received no answer from you. Dear brother, I have sold the coffee-house in the city a year ago, and I have bought 260 acres of fine land two years ago; the land does cost me 16,000 dollars in money. There is a fine house on it with nine large rooms, beautifully built, as beautiful as Madam Grapler's house, not so large; it is situated near the city; the land is nearly quite level, like that round the city with you. I do plow with four plows. I have 9 horses and 6 cows, good milkers. I have beeves and calves, and 90 hogs, small and large. Last winter I have killed 68 fat hogs. I have sold the meat mostly at 3 dollars a 100 pounds; last year I had 83 acres in corn. I sold corn, 260 barrels, at one dollar a barrel; 25 acres in wheat; 14 acres in oats; 50
31 acres in hemp. The hemp does bring me 2,250 dollars in money, according to the prices of the date. Dear brother, I have 10 slaves, large and little ones. I do not work myself, only as overseer. Last year I bought 2 black men. I paid 1,500 dollars for them; one of them I have hired out for one year 100 dollars. The house in the city cost me 1,700 dollars. I rented it out for one year 100 dollars; this year I have wheat, 35 acres, and oats 15 acres; I am ready to sow now, corn, I do plant 80 acres; 50 acres in hemp; we have fine weather at present for planting.

Dear brother, in America, however, we are well off. I have a fine carriage for riding therein for me and my wife, when we do go out promenading as fine as Graplies', Lius or Kasmer's is. Dear brother, the money in America increases so much in about 3 or 4 years that a person soon does not know what to do with it. There have many young men gone to California to dig the gold; there is so much gold there that the people soon know not what to do with it. Dear brother, I cannot write to you all the minutiæ, because it would take me a
32 month time. I wish a thousand times for you, my sister, and her 4 children and her husband; but when I thought how long and

difficult and dangerous the trip is, I would not write to you to come. However, if God leaves me my health, I will see you once more in Switzerland. The trip is not too difficult for me to come to you; not that I would remain in Switzerland; America is good enough for me. Dear brother, I hope that you do receive the letter, and write to me about my father, whether he is still alive or not, and my sister and her children, and how things go with her, good or bad. Dear brother, write to me whether you have married or not, and who she is; whether I know her or not. I wish that you show the letter to all my friends and acquaintances, and tell them that is the truth. Tell them who work in the glass-house for nothing to come to America and eat meat, and not stand in the schuspol to cook the potatoes and work for 18 cents or 6 batzen a day. Come a come,
and take one hundred cents or forty batzen a day for each
33 day you work, and sit down to a meal which, of all sorts, is
cooked like one at a wedding with you. The work is not harder than at the gresslis, in the glass-house. Tell Johann Horn, Dorsen Urs, Peter Flure, and Menes Johannes and Johan Hegmuller, huts, and Johann and Johann Hegmullus, victors, and Jacob Hegmuller, tailoryoe, and all others who enquire after me for trade, the price is 150 cents each day; for the women folks the price is 40 to 50 dollars a year. Show the letter to Anna Maria Meier Segrist, and Anna Maria Steigee, and Maria Anna Flure, Cant. Daesle, I have always thought of them, because I spent with them many a hard time on account of my stepmother. Dear brother, two years ago a black man has died of mine; he is worth one thousand dollars in money. Now, I cannot add much more for you, because the time passes by and the paper gets smaller. Dear brother, write to me as soon as you receive my letter, whether my father and my sister, and
her 4 children and her husband are living yet or not, and how
34 things go with them and you; how matters go with you, good
or bad. Write to me also how Baptiste Hans and Jacob Fringle daughters are, to whom I stood as godfather, whether they are living yet or not. Write to me whether all our relations are alive yet, whether any have died. Write to me also whether my acquaintances are alive yet, whether any have died. Of those who went the same time with me, I know nothing of them. I have received your letter Oct. 29th, 1842, and no new ones since. I have written one to you July 11th, 1843, and one in the year May 22, 1845, and no answer from you. I have the newspaper from France and Germany and Switzerland. I must only * * * * * Dear brother and father and sister, I cannot write father, because my heart is full; my * * * * * is confusion. To the protection of the Most High recommend. I bid you a hearty farewell.

Your beloved son, your loving brother,

URS PETER JEEKER.

N. B. It would give a heartfelt joy to me and my wife if you would write to me of you and your children, your relatives

35 and acquaintances. Dear bother, you must write the address as I write it to you.

PETER YAKER *a* VERSAILLES,
Woodford County, Kentucky, United States of America.

Show the letter to Luis Graplies and Casimer Graplies, and write to me whether Madam Graplies is living yet; and tell them in America is finer glass is made than they make with them, and is nearly the same price that with them; and tell the Graplies that I am living yet, and I wish them God's blessing.

For a true copy of the original, as produced, Dorneck, January 21st, 1859. The secretary of the Court of Dorneck.

[L. S.] C. KOCH, *Notary.*

Certified to by John Endlick, U. S. consul, at Basle, Switzerland.

STATE OF KENTUCKY, *Jefferson County:*

This is to certify that the foregoing is a full and true translation of a certified copy of a letter of Peter Jecker, (Yaker,) Ver-
36 sailles, to his father and brothers in Switzerland. Witness my hand and seal.

Louisville, March 29th, 1859.

[SEAL.] CHAS. FRANK,
Notary Public for and in Jeff. City.

A certificate of birth and baptism, marriage and death, of the parents of Peter Jeeker, dec'd.

1. Extract from the register of baptism of the parish church, Barscheogle, canton Solothurn:

There was born and baptised October 26, 1768, Urs Peter Jeeker, a legitimate son of Urs Jeeker and Ana Maria Jeecker, both of Barschiogl.

2. Ibid: There was born and baptised April 29th, 1784, Maria Ana, a legitimate daughter of Urs Jecker and Ana Muller, both of Barschiogl.

3. Extract from the register of marriage of the same parish church:

There were married May 23, 1803, Urs Peter Jeeker and Maria Ana Jecker, both of Barschiogl, (names of resp. parents added, as above.)

37 4. Extract of register of deaths of same parish church:

There died February 8, 1814, and was buried Feb'y 10, 1814, in Barschiogl, Maria Ana Jeeker, wife of Urs Peter Jeeker.

6. Extract from the same register:

There died Oct. 24th, 1848, and was buried October 26, 1848, in Barschiogl, Urs Peter Jeeker, widower of Maria Ana Jeeker.

All given by Pastor Jeger, of and at Barschiogl, dd January 20th, 1859.

Certified to by— XAVER.

Haver Muir, for the annuem of Barschiogl, by J. Roth, upper Ammann of Dorneck & Thurstien, at Bresenbach, canton Solothurn, and John Endlech, U. S. consul at Basle, Switzerland.

STATE OF KENTUCKY, *Jefferson County:*

This is to certify that the foregoing is a true and correct translation, synopsis of 5 certificates of birth and baptism, marriage and death, of the parents of Peter Jecker, (Yaker,) dec'd. Witness my hand.

Louisville, March 29. 1859.

CHAS. FRANK,
Notary Public for and in Jefferson County.

38 B. Certificate of birth and baptism of the children of Mrs. Peter Jecker and Maria Ana, of Barschiogl.

1. extract from the register of baptism of the parish church, Barschiogl, canton Solothern.

There was born and baptized January 13, 1805, Magdalena, legitimate daughter of the above. (2 Ibid.)

There was born and baptised January 22, 1806, Urs Peter, legitimate son of the above. (3 Ibid.)

There was born and baptised June 24, 1810, Johannes, legitimate son of the above.

All given by pastor Jeger, of and at Barschiogl, *dd.*, January 20, 1859, certified to by Xaver Meier, for the ammaun of Barschiogl, by J. Roth, uper ammaun of Derneck and Thurstein, at Bratenbach, and John Endlich, U. S. consul at Basle, Switzerland.

STATE OF KENTUCKY, *Jefferson County·*

This is to certify that the foregoing is a true and correct translation synopsis of certificates of birth and baptism of the
39 children of Urs Peter Jeeker and Maria Ana Jeeker.

Witness my hand, Louisville, March 29, 1859.

CHARLES FRANK,
Notary Public for and in Jeff. C't'y.

C. Family lineage and authentic account of the brother and sisterhood of Urs Peter Jeeker of Barschiogl, who, in the year 1831, emgrated to America, with Magdalena Jecker and Johannes Jecker, of Barschiogl, canton Solothern. Urs Peter Jecker, born October 26, 1768, married May 24, 1803, to Maria Ana Jeecker, born April 29th, 1784. Begot the following children:

1. Magdalena Jeeker, born Jan'y 17, 1808; 2. Urs Peter Jeeker, born Jan'y 22, 1806; 1831 emigrated to America; 3. Johannes Jeeker, born June 24, 1810.

Given by pastor Jeger, of and at Barschiogl, *dd.*, January
40 20, 1859; certified to by Xaver Meier, for the ammann of Barschiogl, by J. Roth, upper ammann of Dorneck and Thurtion, at Brutenback, and John Endlich, U. S. consul at Basle, Switzerland.

STATE OF KENTUCKY, *Jefferson County:*

This is to certify that the forgoing is a true and correct translation synopsis of the family lineage and authentic account of the brother and sisterhood of Urs Peter Jecker.

Witness my hand, Louisville, March 29, 1859.

CHARLES FRANK,
Notary Public for and in Jeff C'ty.

D 1. Certificate of birth and baptism of 4 children of Magdalena Honer, born Jeecker.

1. Extract from the register of baptism of the parish church, Dorneck, canton Solothurn.

There was born and baptized January 24, 1828, Xaver, a legitimate son of Fraz Honer, of Dorneck, and Magdalena Jecker, of Barschiogle. (Ibid.)

41 There was born December 30th, 1829, and baptised the 31st, Maria Ana Honer, a legitimate daughter of same. (Ibid.

There was born and baptised August 21st, 1834, Johann Honer, a legitimate son of same, (Ibid).

There was born December 29th, 1838, and baptised the 30th, Franz, a legitimate son of same.

All given by pastor (deccon) J. Probst, of and at Dorneck, *dd.*, January 21, 1859, certified to by B. Tor Runz, ammann of the community Dorneck, by J. Roth, upper ammann of Dorneck and Thusteens at Brulenbach, and John Endlich, U. S. consul at Basle Switzerland.

STATE OF KENTUCKY, *Jefferson County:*

This is to certify that the foregoing is a true and correct translated synopsis of certificates of birth and baptism of 4 children of Magdalena Honer, born Jecker.

Witness my hand, Louisville, March 29, 1859.

CHAS. FRANK,
Notary Public for and in Jeff County.

42 D 2. Certificate of the death of the daughter of Magdalena Honer, born Jecker, Anna Maria Rumpel.

Extract from the register of death of the parish church, Dorneck, canton Solothurn.

There died April 11, 1844, and was buried April 13th, in the parish Dorneck, A. Maria Rumpel, born Honer, wife of Josef Rumpel, aged 24 years.

Given by pastor (deccon) J. Probst, of and at Dorneck, *dd.*, Jan-

nary 21, 1859, certified to by B. To Kunz, amman of the community Dorneck, by J. Roth, upper amman of Dorneck aud Thiensteen, at Burlurback, and John Endliech, U. S. consul at Basle, Switzerland.

STATE OF KENUCKY, *Jefferson County:*

This is to certify that the foregoing is a true and correct translation synopsis of a certificate of death of the daughter of Magdalena Honer, born Jecker, Anna Maria Rumpel.

Witness my hand, March 29, 1859.

CHAS. FRANK,
Notary Public for and in Jeff. C'ty.

Louisville, March 29, 1859.

43 D 3. Certificate of birth and baptism of the minor children of Ana Maria Rumpel, born Honer.

Extract from the register of baptism of the parish church, Dorneck, canton Solothurn.

There was born Dec'r 34, 1850. and baptised Jan'y 6, 1851, Johann, a legitimate son of Josef Rumpel, of Dorneck, and A. Maria Honer, of Dorneck. (Ibid.)

There was born Feb'y 22, 1852, and baptised the 24th, Jacob, a legitimate son of same.

Given by pastor (deccon) J. Probst, of and at Dorneck, *dd.*, January 21st, 1859, certified to by B. Kunz, pastor amman of the community Dorneck, J. Roth, upper amman of Dorneck and Thierten at Leach, and John Edlich, U. S. consul at Basle, Switzerland.

STATE OF KENTUCKY, *Jefferson County:*

This is to certify that the foregoing is a true and correct translation synopsis of certificates of birth and baptism of the minor
44 children of Ana Maria Rumpel, born Honer.

Witness my hand, Louisville, March 29th 1859.

CHAS. FRANK,
Notary Public for and in Jeff. C'ty.

D 4. Certificate of the appointment of Josef Rumpel as guardian for his sons Johann and Jacob.

The orphans court of the community Dorneck herewith certifies:

That Joseph Rumpel, old sigress of Dornach, has been appointed guardian for his sons Johann and Jacob Rumpel, such being minors.

DORNECK, *January* 21, 1850.

B. STOCKLI, Presdi.:

Certified to by T. Kunz, ammann of Dorneck, and Thierstien, and John Endlich, U. S. Consul at Basle, Switzerland.

STATE OF KENTUCKY, *Jefferson County*:

This is to certify that the foregoing is a true and corrrect translated synopsis of a certificate of the appointment of Joseph Rumpel as guardian for his sons Johann and Jacob. Witness my hand.

Louisville, March 26, 1857.

CHARLES FRANK,
Notary Public for and in Jeff. City.

45 D. Extract from the register of death of the parish Dorneck. canton Solothen. There died April 12, 1846, and was buried the 14th, in the parish Dorneck, Magdalena Honer, born Jecker, wife of Fraz Honer, aged 48 years, 9 months.

Given by Pastor (deacon) J Probst, of and at Dorick, on January 21, 1859, certified to by B. Kunz, ammann of the community Dorneck, I Roth upper ammann of Dorneck and Thierlenbach, and John Endlich, U. S. Consul at Bazle, Switzerland.

STATE OF KENTUCKY, *Jefferson County*:

This is to certify that the foregoing is a true and correct translated synopsis of a certificate of death of Magdalena Honer, born Jecker. Witness my hand.

Louisville, March 29, 1869.

CHARLES FRANK,
Notary Public for and in Jeff. city.

And afterwards, to wit, at a court began and held, as aforesaid, on the 6th day of October, 1859.

On motion of the unknown def'ts in this suit, who have filed
46 their petitions herein, claiming to be the heirs of Peter Yearker, leave is granted to them to take depositions before the persons who at the time may be consul of the United States at Basle, in Switzerland, or any other consel of the United States in Switzerland, in Europe, after furnishing T. N. Lindsey, counsul of the State of Kentucky, and to Thos. P. Porter or M. C. Johnson, counsel of the def't, Mrs. Yaker, the interrogatories that are to be propounded to the witnesses whose depositions are to be taken. The consul shall certify to the correctness of the answers to such interrogatories under his seal, and leave is given them to withdraw any of the exhibits filed by them to take proof touching the same.

And afterwards, on 6th day of April, 1860, this day came the pl'ff, by attorney, and filed an amended petition herein.

Order filing am'd pet.—Amended petition.

THE COM'TH OF KY., pl'ff,
vs.
PETER YAKER'S ADM'R., def't.

The Commonwealth of Kentucky, by her agent Th. N.
47 Lindsey, makes the said Th. N. Lindsey def't hereto, and

charges that shortly before the institution of this suit the auditor of public accounts, with the consent of and approbation of the governor and att'y gen'l of the Commonwealth, by contract, in writing, now on file in the said auditor's office, executed, according to the requirements of the laws, agreed and contracted to give to said Lindsey, for his services as agent and attorney, one-half of all the property of every kind that belonged to said Peter Yaker's estate, that the Commonwealth of Kentucky was entitled to, by reason of the said Peter Yaker's heirs and distributees not claiming said estate within five years from the death or said Peter Yaker; that in view of said contract said Lindsey became, on the institution of this suit, entitled to one-half of any portion coming to the Commonwealth of said estate, and therefore a right was vested in him which the legislature by no subsequent enactment could in any way destroy or impair. The plaintiff charges that said defendants claiming to be heirs and distributees of Peter Yaker, dec'd, did not assert any claim to
48 said estate till five years had elapsed; they are aliens, foreigners, and residents out of the United States. The pl'ff charges their assertions of claim to said estate after the five years had elapsed does not give them right thereto, though they may be relatives of said decedant, nor does their failure to claim give to the wife and widow any claim to said estate, because of the fact that said Yaker did leave the co-def'ts of said widow, heirs, and distributees. The pl'ff prays judg't as in his original petition.

THE COM'TH OF KENTUCKY,
By her agent and attornoy TH. N. LINDSEY.

The heirs of Peter Yaker admit that T. N. Lindsey had such a conaract with the Commonwealth of Kentucky as is set forth in the within, and that the within may be taken as Lindsey's answer in the suit mentioned and his assertions of claim under the contract, he entering his appearance.

GEO. B. KINKEAD,
Att'y for Yaker's Heirs.
TH. N. LINDSEY.

And afterwards, to wit, at a court begun and held as afs'd,
49 on the 6th day of April, 1860.

Order filing amended petition.

This day came the pl'ff, by her attorney, and filed an amended petition herein and also an agreement; and it is ordered that the heirs of Peter Yaker in Switzerland be made parties hereto, and this cause came on to be heard, but the court not being advised took time.

Decree.

And afterwards, to wit, at a court begun and held as afs'd, on the 6th day of April, 1860, this cause coming on to be heard on the

petition, answers, agreement, and proofs, and the court being fully advised, on consideration, doth adjudge that the widow of Peter Yaker, dec'd, become invested by his death with the title to all the lands owned by Peter Yaker at the time of his death, and she is entitled to the use for life of one-third of the slaves belonging to said estate, and to one-half of all the personal estate remaining after the payment of the debts and costs of administering said estate and the other debts, kindred of Peter Yaker are entitled to the slaves that may be allotted to the widow for dower at her death and to the remaining slaves, and to one-half of the surplus of the personal
50 estate after payment of debts and costs of administrations. The Commonwealth of Kentucky has no right to any part of the estate of any kind left by s'd Peter Yaker, and the petition of the Commonwealth is dismissed absolutely, as the foregoing judg't settles the rights of the parties, as their interest in the estate of Peter Yaker, dec'd, either party may prosecute an appeal which is granted them. The remainder of the cause is retained for future judgment that may be found necessary to settle and distribute said estate.

Final judg't.

And afterwards, to wit, at a court begun and held as aforesaid, on the 3d day of October, 1860.

The court now amends and corrects the judgment heretofore rendered in this cause as follows : The judgment of the court now is that the widow of said Peter Yager is entitled to one-half of the slaves of which the said Peter died possessed during her life; and at her death said half of said slaves shall belong and pass to the heirs of said Peter hereinafter named, to wit : Johannar Yager, who is entitled to one-fourth of said personal estate of said Peter, in
51 possession, including the slaves, and to one-fourth of said slaves at the death of said widow Zanier; Johan and Fraz Haner, who were children of Magdalena, who was sister of said Peter, but who died before him, each of whom is entitled to one-eighth of said personal estate, including the slaves, and each to one-fourth of one-half of said slaves allotted to the widow when she dies; and Johan and Jacob Rumpel children of Maria Anna Haner, who was daughter of said Magdalena, who was married and died before the death of said Peter, each is entitled to one-sixteenth of said personal estate, including said slaves, and each to one-eighth of one-half of said slaves at the death of said widow which may be allotted to her. The master comr. will proceed to allot to the said widow one-half of said slaves in value, and to the other heirs named herein one-half, without attempting to make any sub-divisions of said slaves among said heirs.

It appears that the adm'r of said Peter Yager, *(i. e.)* Dean McGee, admits in his answer that he had a settlement with the comr. of the County Court of Woodford, on the day of , showing a balance in his hands on that day of $11,169 94 belonging to said estate and for distribution, and from said settlement that
53 it was dated on the 12th day of January, 1858, one-half of

which amount, to wit, $5,584 97, with interest from said 12 day of Jany.. 1858, belongs to the before-mentioned parties, heirs of said Peter Yager, in the proportions above set forth. It is now adjudged that said Dean McGee out of the money in his hands, as admr. af'sd, pay to said heirs the sum of $5,584 97, with interest at the rate of six per cent per annum from the 12th day of January, 1858, until paid, and also their costs in this suit expended, for which they may have execution. It further appearing that said adm'r has not completely settled his accounts as adm'r, the master com'r of this court is directed to call him before him and compel him to complete it as near as may be; take any proof offered in regard to the correctness of his entire accounts as adm'r and touching an interest account on same, according to the statute, and this cause is continued. Saml. Gray, who was appointed by the court, corresponding attorney for the non-resident heirs, is allowed $250 dollars for his services, and the same will be paid by def't, and charged as part of the costs.

54 *Commissioner to take depos.*

The Commonwealth of Kentucky to any consul of the United States at Basle, in Switzerland, or any other consul of the United States in Switzerland, in Europe.

Know ye, that trusting in your fidelity and provident circumspection in diligently examining the witnesses for the unknown def'ts, in a certain matter of controversy, now depending and undetermined in the Woodford Circuit Court, wherein the Commonwealth of Kentucky is pl'ff and Dean Magee, adm'r of Peter Yager, dec'd, and Jane Yager, widow of said Peter Yager, and the unknown heirs and distributees of said Peter Yager, dec'd, are def'ts, do command you that at such certain days and places as you shall call and cause to come before you, and them diligently examine on oath in answer to the interrogatories hereunto annexed, and his examination in your said presence, distinctly and plainly, without delay, you shall send enclosed and sealed, returning also to us this commission.

Witness Swift Darneal, clerk of said court, in the town of Versailles, this 5th day of December, 1859, and in the 68 year of the Commonwealth.

[SEAL.] SWIFT DARNEAL, *C. W. C. C.*
By SAM'L. S. DARNEAL, *D. C.*

55 *Interrogatories.*

Questions to be propounded to witnesses in Switzerland, to be read by those claiming to be heirs of Peter Yaker, dec'd, in a certain suit now pending in the Woodford Circuit Court, State of Kentucky, and United States of America, wherein the State of Kentucky is pl'ff and Dean Magee, adm. of Peter Yaker, and others, defendants.

1. Did you know the late Peter Yaker, who lived in the county of Woodford, near Versailles, Kentucky, United States of America?

2. When did Peter Yaker leave Switzerland to come to America? State as near as you can.

3. How was his family name spelled in his native language?

4. Did you know his father and mother? What were their names? Where did they live, and where did they die, as near as you can remember.

4. If Peter Yaker had any brothers and sisters, what were their names? Where did they live, and where did they die?

5. Have his sisters married, and whom? And if dead, did they leave any children? And are they, the children, living? If dead, where did they die? Give their names.

56 6. If any of his deceased brothers' and sisters' children have married, state the name of their husband. And if, after marrying, they died, state if they left any children, and give the names of such child or children.

7. Are you related by blood, or connected by marriage, with the late Peter Yaker, of Woodford county, Kentucky, U. S. of A.? and if so, state how you are related or connected.

8. Did the said Peter Yaker, or not, keep up a correspondence with his family in Switzerland by writing to them, and did he sign his name to such letters as he wrote as Yaker or Jecker?

9. Where were the letters addressed to them post-marked? and to what post office did his family address letters to him?

10. Had his father any other son, or his brother any other brother living, within the last twenty years in the county of Woodford, and State of Kentucky, U. S. of America?

Cross-interrogatories by counsel of Mrs. Yaker.

1. What is your age, residence, and occupation?

2. Did you ever see Peter Yaker, who died in Woodford county, Kentucky, in the United States of America, or, did you have any personal acquaintance with him?

57 3. Have you any interest, direct or indirect, in the event of this suit, or will receive any benefit from the success of Peter Yaker's relations in Switzerland in recovering his estate? and if you will not, will your wife, your children, or any of your relations?

4. If Peter Yaker wrote letters to his relations in Switzerland, attach those letters to your depositions, or state the reason of your not doing so.

Depos.

Depositions of sundry witnesses taken before John Endlich, United States Consul at Basle, Switzerland, in virtue of annexed commission.

Document No. 1.

Issued out of said court in said action, on the sixth day of February, in the year 1860, between the hours of 10 o'clock a. m. and 6 o'clock p. m., at Basle, afs'd. The questions were put and

answered in the German language, in the order they appear in the annexed document, No. 2. The opposite is the true and correct transactions of the answers into English.

The deposition of Franz Mackers Jecker, taken on the day and year, and between the hours afs'd, to be used as evidence on behalf
58 of def'ts in the foregoing action.

The deponent, being first duly sworn, deposeth to the first interrogatory: I knew a Peter Yaker who emigrated to America, and who shall have died in Woodford county, near Versailles, Kentucky, United States of America, on November 8th, 1851. I was appointed by the Orphan's Court of Bareshivil, the birth-place of Peter Jecker, or Yaker, as his assistant or adm'r for some property which he inherited, consisting of some pieces of land, and was confirmed as such by the Cantonal government, as seen in annexed document, No. 5. I serve still in this capacity, under responsibility, (conform to the civil laws, § 342.)

To the 2d interrogatory he saith: I cannot remember the day that Peter Jecker left Switzerland for America; it was in Spring, 1831.

To the 3d interrogatory he saith: Jucken.

To the 3d he saith: I knew father and mother of Peter Jecker; the father's name was also Peter Jecker, and that of his mother Maria Anna Jecker; they lived in Barschivil; the mother died in the year 1813, the father in the year 1848.

59 To the 4th interrog. he saith: Peter Jecker or Yaker had but one brother, called Johann, and one sister, called Magdalena; the brother always, and up to this day, lived in Barschivil; the sister was living at the same place until her marriage, after which she lived at Dorneck up to her death, in 1846.

To the 5th interrog. he saith: The sister was married to Franz Haner, from Dornach, canton Soterhum; she died in the year 1846, and left four children, three sons and one daughter; the names of the sons are Xaver, Johann, and Franz; the name of the daughter I don't know; she is also dead; when she died I don't know.

To the 6th interrog. he saith: Two children of Peter Jecker's sister was married, namely, the son, Xaver, and the daughter; the names of those whom they married I don't know; whether the daughter had any children I cannot say, neither their names.

To the 7th interrog. he saith: No. In no way, though my name is also Jecker, as appears from document No. 1.

To the 8th interrog. he saith: Peter Jecker wrote several
60 times to his father and brother in Barschivil, tho' I have never seen those letters. My wife, who was single at that time, read them. I know nothing further about this question.

To the 9th interrog. he saith: I have not seen, as already said, the letters which Peter Jecker wrote from America, and know not where his relations addressed their letters to him.

To the 10th interrog. he saith: No.

Cross-Interrogatories.

To the 1st cross-interrog. he saith: I am 63 years old, living at Barschivil, and am a forrester.

To the 2nd cross-interrog. he saith: I knew Peter Jecker very well, and doubt not that Peter Yaker who died in Woodford county, Kentucky, was the same Peter Jecker.

To the 3rd cross-interrog. he saith: No; neither I, my wife, children, or relatives.

To the 4th cross-interrog. he saith: I recognise, in the doct., No. 3, the handwriting of Peter Jecker, and annex the same hereby, his Dutch name.

61 U. S. CONSULATE, *Basle, Switzerland.*

I, John Endlich, United States consul, do certify that the foregoing deposition of Franz Markus Jecker was taken, and was read to, and was subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Franz Markus Jecker being by me first sworn to tell the truth, the whole truth, and nothing but the truth, in his evidence in said action, and his statements being reduced to writing by me in his presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDLICH,
U. S. Consul.

Johann Meyer.

The deposition of Johann Meyer taken on the day and year and between the hours aforesaid to be used as evidence on behalf of def'ts in the foregoing action.

The deponent, being first duly sworn, deposeth and saith:

To the 1st interrogatory: I doubt not that the Peter Jecker, who died near Versailles, Woodford county, Ky., U. S., of America, was the same Peter Jecker I knew from my youth.

62 To the 2d interrogatory he saith: Jurkun.

Also to the 3d he saith: I knew his parents well. Their names were Peter Jecker and Maria Anna Jecker, and were living in Barschivil. The mother died in the year 1813, and the father died in the year 1843. I knew not the days of their death.

To the 4th interrogatory he saith: Peter Jecker had one brother with the name of Johann, and one sister whose name was Magdalena. The brother lives up to that day in Barschivil; the sister lived also there until her marriage, after which she lived in Dornach where she died; in which year she died I don't know.

To the 5th interrog. he saith: The sister married Franz Haner, from Dornach canton, Solothum. She is dead, and left four children, of which there are sons. I know that since a daughter died; I also know that the mother died. The names of these children are unknown to me; also the time of the daughters and the mother's

63 (Peter Jecker's sister's) death.

To the 6th interrog. he saith: I know that two children of

Peter Jecker's sister were married; a son and a daughter, but I don't know the married; that the daughter died, after her marriage is unknown to me, but not whether she left children or what their name.

To the 7th interrogatory he saith: No; as appears from document No. 4.

To the 8th interrog. he saith: I know that Peter Jecker wrote several times to his father and brother in Barschivil. I have heard some of those letters read in my house, and can remember were that I have seen his name written Peter Yaker, which I wondered at, but it shall sound in America just like Jecker, and was his address.

To the 9th interrogatory he saith: I know of two letters which were addressed to the father of Peter Jecker, whose name was also Peter Jecker; those two letters I saw about 20 years ago. I heard also that he wrote to his brother. I know no more to answer to this question.

To the 10th interrogatory he saith: No.

64 *Cross-interrogatories.*

To the 1st cross-interrogatory he saith: My age is 65 years past. I live in Barschivil, and am a farmer.

To the 2nd cross-interrogatory he saith: I knew Peter Jecker, who died in America, near Versailles, Woodford county, Kentucky, under the name of Peter Yaker, very well from infancy.

To the 3rd cross-interrogatory he saith: No; by no means.

To the 4th cross-interrogatory he saith: I recognize, decidedly, the handwriting of Peter Jecker in the annexed letter.

No. 3. Have nothing to attach.

[His name in German.]

UNITED STATES CONSULATE,
Basle, Switzerland.

I, John Endlich, United States consul, do certify that that the foregoing deposition of Johann Meier was taken and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Johann Meier, being by me first sworn to state the truth, the whole truth, and nothing but the
65 truth, in his evidence in said action, and his statements being reduced to writing by me in his presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDLICH,
U. S. Consul.

Franz Joseph Stegmuller.

The deposition of Franz Joseph Stegmuller, taken on the day and year and between the hours aforesaid, to be used as evidence on behalf of def'ts in the foregoing action. The deponent, on being first duly sworn, deposeth to the first interrogatory.

The, in Woodford county, near Versailles, Ky., deceased, Peter Yaker was, as I certainly believe, the Peter Jecker known to me from infancy.

To the 2nd interrogatory he saith: Peter Jecker went to America in the year 1831, on the 10th or 13th of April.

To the 3rd interrogatory he saith: He wrote his name like his father, Peter Jecker, Jusken.

To the 3rd (again) he saith: I knew his father and mother; the father very well, the mother but little. They lived in Barschivil.

The mother died when I was but very young, and the father
66 in 1848. His name was Peter Jecker.

To the 4th interrogatory he saith: Peter Jecker had one brother and one sister, the brother is called Johann, and still lives in Barschivil. The sister's name was Magdalena. who died in Dernach, where she lived after her marriage, in the year 1846.

To the 5th interrogatory he saith: Peter Jecker's sister was married to Franz Haner, from Dornach, canton Solothun. She left four children, of which three sons, Johann, Xavier, and Franz are still living, but the daughter, whose name was Anna Maria, has died. I don't know when she died.

To the 6th interrogatory he saith: Peter Jecker's sister had two children married, namely, the son Xavier and the daughter Anna Maria; the latter died and left also two children. I know no more about this question.

To the 7th interrogatory he saith: No.

To the 8th interrogatory he saith: Yes; I know positively that Peter Jecker corresponded with his relations in Switzerland. I have heard three letters read; but as I myself cannot read, I can say nothing about the signature.

67 To the 9th interrogatory he saith: I can for the same reason say nothing. Can only write my own name.

To the 10 interrogatory he saith: No.

Cross-interrogatories.

To the 1st cross-interrogatory he saith: I am near 54 years old. I live in Barschivil, and am a farmer.

To the 2nd cross-interrogatory he saith: I knew Peter Jecker very well; we were born in the same year, and served together in the militia. I can doubt no moment that the Peter Yaker, or how else he wrote his name, who died near Versailles, Woodford county, Ky., was the same Peter Jecker.

To the 3rd cross-interrogatory he saith: No; neither my family nor relations.

To the 4th cross-interrogatory he saith: I can distinguish no writings.

[His name in German.]

UNITED STATES CONSULATE,
Basle, Switzerland.

I, John Endlich, United States consul, do certify that the foregoing deposition of Franz Joseph Stegmuller was taken and [illegible]s read to and was subscribed by him in my presence at the time and place

68 and in the action mentioned in the caption, the said Franz Joseph Stegmuller being by me first sworn to state the truth, the whole truth, and nothing but the truth, in his evidence in said action, and his statements being reduced to writing by me in my presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDLICH,
U. S. Consul.

Peter Stegmuller.

The deposition of Peter Stegmuller, taken on the day and year and between the hours aforesaid, to be used as evidence on behalf of defendants in the foregoing action.

The deponent, being first duly sworn, deposeth to the 1st interrogatory: The Peter Yaker, dec'd, in question was, as I honestly believe, Peter Jecker, from Barschivil, whom I knew well.

To the 2nd interrogatory he saith: In spring, 1831.

To the 3rd interrogatory he saith: Juckun.

To the 3rd interrogatory he saith: The father named Peter Jecker. I knew the mother. I knew not the father; died 12 years ago. I don't know when the mother died. They lived in Barschivil.

69 To the 4th interrogatory he saith: Peter Jecker had one brother with the name of Johann and one sister with the name of Magdalena; the brother always lived in Barschivil, but the sister lived, after her marriage, in Dornach where she died.

To the 5th interrogatory he saith: The sister was married to Franz Haner from Dornach, canton Solothum; she died and left three sons, called Xaver, Johann & Franz, and one daughter, whose name is unknown to me; the sons still live, but the daughter has died; I don't know when.

To the 6th interrogatory he saith: Of Peter Jecker's sister's children two were married, the son Xaver, and the daughter, to whom I don't know; I cannot say whether the daughter has left children or their names.

To the 7th interrogatory he saith: No, in no manner.

To the 8th interrogatory he saith: I know of two letters which Peter Jecker wrote from America to his relations; the one to the father; the other to the brothers, addressed to Barschivil. I

70 heard the letters read; the signature I have not seen.

To the 9th interrogatory he saith: The two letters were addressed to the father and brother as already said, but where they addressed their letters to Peter Jecker I cannot say.

To the 10th interrogatory he saith: No; the father had no other sons but Peter, who died near Versailles, and Johann, who always lived in Barschivil.

Cross-interrogatories.

To the 1st cross-interrogatory he saith: My son is 43 years; live in Barschivil, and am a farmer.

To the 2nd cross-interrogatory he saith: I know Peter Jecker well, and believe the deceased Peter Yaker or Yakar was the same.

To the 3rd cross-interrogatory he saith: No; in no way.

To the 4th cross-interrogatory he saith: Document No. 3, is the handwriting of Peter Jecker.

[His name in German.]

UNITED STATES CONSULATE, *Basle, Switzerland.*

71 I, John Endlich, United States Consul, do certify that the foregoing deposition of Peter Stegmuller was taken, and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Peter Stegmuller being by me first sworn to state the truth, the whole truth, and nothing but the truth, in his evidence in said action, and his statements being reduced to writing by me in his presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDLICK, *U. S. Consul.*

Joseph Meizer.

The deposition of Joseph Meizer taken on the day and year, and between the hours afs'd to, be used as evidence on behalf of defendants in the foregoing action. The deponent, being first duly sworn, deposeth:

To the 1st interrogatory. I knew Peter Jecker or Yaker very well.

To the 2nd interrogatory he saith: He left Switzerland for America in beginning of April, 1831.

To the 3rd interrogatory he saith: Jecker, Lynael. I knew
72 his parents; the mother less than the father; the father's name was Peter Yaker. I am not certain of his mother's name; the mother died when I was a little boy; the fathe died in the year 1848.

To the 4th interrogatory he saith: Peter Jecker had a brother Johann and a sister Magdalena. Johann always lived in Barschivil; Magdalena lived also there, until her marriage to Dornach; the brother still lives; the sister is dead. Don't know when she died.

To the 5th interrogatory he saith: Peter Jecker's sister was married to Franz Haner from Dornach, canton Solothum; of four children she left three: three sons are living, namely, Xavier, Johann & Franz; the daughter's name is unknown to me; the latter is dead; when she died I don't know. I know that she left children, but not their names.

To the 6th interrogatory he saith: Two children of Peter Yaker's sister have married, the son Xaver, and the above-mentioned daughter; don't know to whom they were married; the daughter
73 died and left children; how many or their names I cannot say.

To the 7th interrogatory he saith: No.

To the 8th interrogatory he saith: I heard several times that Peter Jecker wrote to his relations from America, but as I have never seen any of these letters, I don't know how he signed his name; Jecker or otherwise.

To the 9th interrogatory he saith: This I don't know.

To the 10th interrogatory he saith: No.

Cross-interrogatories.

To the 1st cross-interrogatory he saith: I am near 54 years old; live in Barschivil, and am a farmer.

To the 2nd cross-int'y he saith: I knew Peter Jecker well, and doubt not, after all I heard, that the Peter Yaker or Yakar, who died near Versailles, Woodford county, Ky., U. S., of America, was the very Peter Jecker.

To the 3rd cross-interrogatory he saith: No.

To the 4th cross-interrogatory he saith: The document No. 3 I recognise as the handwriting of Peter Jecker.

[His name in German.]

UNITED STATES CONSULTATE, *Basle Switzerland.*

74 I, John Endlick, U. S. Consul, do certify that the foregoing deposition of Joseph Meir was taken, and was read to, and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Joseph Meire being by me first sworn to state the truth, the whole truth, and nothing but the truth in his evidence in said action, and his statements being reduced to writing by me in his presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDLICK, *U. S. Consul.*

Urs Stegmuller.

The deposition of Urs Stegmuller, taken on the day and year, and between the hours aforesaid to be used as evidence on behalf of def'ts in the foregoing action. the deponent being first duly sworn, deposeth to the first interrogatory:

I knew Peter Jecker very well; he went to America, and died near Versailles, Woodford county, Kentucky, under the name of Peter Yaker or Yakar.

To the 2d interrogatory he saith: Beginning of April, in the year 1831.

75 To the 3rd interrogatory he saith: Jecker.

To the 3rd interrogatory he saith: I knew the father, Peter Jecker, very well, but the mother and her name I knew not; the parents of Peter Jecker lived in Barschivil; the father died 12 years ago; the year when the mother died I knew not.

To the 4th interrogatory he saith: Peter Jecker had one brother, Johann, and one sister. Magdalena; the brother still lives, as always, in Barschivil; the sister lived at the same place as long as she was single; after her marriage she lived in Dornach; the sister died, when I cannot say.

To the 5th interrogatory, he saith: The sister was married to Franz Haner, from Dornach, canton Salothum, and has died; she left four children, of which one daughter, who also died; I don't know the names of these children, neither when the daughter died.

To the 6th interrogatory he saith: It is known to me that a son and

a daughter of Peter Jecker's sister have married; to whom
76 both were married I don't know; I also know that the daughter died after her marriage; whether she left children, or their names I don't know.

To the 7th interrogatory he saith: I am in no way related with the Jeckers, as can be seen in document No. 4.

To the 8th interrogatory he saith: Yes; he has corresponded with his father and brother; I saw two letters from him to the same, and have heard them read, but I cannot remember how he signed his name; that the letters were in his handwriting I am fully convinced.

To the 9th interrogatory he saith: The two letters I saw were addressed to Barschivil and to the father, Peter Jecker, and the other to the brother, Johann Jecker; the first letter I saw about 20 years ago, and the second in spring, 1849; but which was addressed to the father and which to the brother, I don't know; neither where they addressed their letters to, to Peter Jecker.

To the 10th interrogatory he saith: No; the father had but two sons, Peter and Johann; Peter went to America, and died there;
77 Johann lives up to this day in Barschivil.

Cross-interrogatories.

To the 1st cross-interrogatory he saith: I am 49 years old; live in Barschivil; am a farmer.

To 2d cross-interrogatory he saith: Yes; I was very well acquainted with Peter Jecker or Yaker, and am fully convinced that the Peter Yaker who died near Versailles, Woodford county, Kentucky, United States of America, was the very Peter Jecker, as plainly appears from the letters.

To the 3rd cross-interrogatory he saith: No.

To the 4th cross-interrogatory he saith: In document No. 3 I recognize the handwriting of Peter Jecker and a letter (dated March 25, 1859,) which I heard read.

[His name in German.]

UNITED STATES CONSULATE,
Basle, Switzerland.

I, John Endlich, U. S. Consul, do certify that the foregoing deposition of Urs Stegmuller was taken and was read to, and subscribed by him in my presence, at the time and place and in the action mentioned in the caption, the said Urs Stegmuller being by me
78 first sworn to state the truth, the whole truth, and nothing but the truth, in his evidence in said action, and his statements being reduced to writing by me in his presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDLICH,
U. S. Consul.

Joseph Holzhers.

The deposition of Urs Joseph Holzhers, taken on the day and year and between the hours aforesaid, to be used as evidence on behalf of the defendant in the foregoing action, deposeth, being first duly sworn, deposeth:

To the 1st interrogatory: The Peter Yaker in question is no doubt the Peter Jecker from Barschivlil, well-known to me.

To the 2d interrog. he saith; He went to America in 1831.

To the 3rd interrog. he saith: Jecker.

To the 3rd interrog. he saith: I knew his father, but not his mother; the latter died when I was very young; her name, also, is unknown to me; the father's name was Peter Jecker; the parents of Peter Jecker, who died in America, lived in Barschivil; I don't
79 know when the mother died; the father died in the fall of 1848.

To the 4th interrogatory he saith: Peter Jecker had one brother and one sister; the brother's name is Johann; the name of the sister was Magdalena; the brother always lived in Barschivil; the sister lived there until she got married; after her marriage she lived in Dornach; I knew that she died, but not where.

To the 5th interrogatory he saith: Peter Jecker's sister was married to Frauz Haver, from Dornach, canton Solothum; she left four children, of which one was a daughter, who also died; the names of these children, and the time when the daughter died, I don't know.

To the 6th interrog. he saith: I know nothing about the question.

To the 7th interrogatory he saith: No.

To the 8th interrogatory he saith: I know that Peter Jecker wrote to his relations; I heard one letter of him read by the late Rev'd Meier, and said it was either in 1838 or 1839; know nothing about the name.

To the 9th interrogatory he saith: The letter I heard read,
80 and saw was addressed to Barschival, to the father of Peter Jecker. I know no more to answer to this question.

To the 10th interrogatory he saith: No.

Cross-interrogatories.

To the 1st cross-interrogatory he saith: My age is 51 years; I live in Barschival, and are a day-laborrer.

To the 2nd cross-interrogatory he saith: I knew Peter Jecker, or Yaker, very well, and I am sure that no other person can be named under that name.

To the 3rd cross-interrog. he saith: No.

To the 4th cross-interrog. he saith: Document No. 3 is in the handwriting of Peter Jecker, or how else he may have written his name, [his name.]

UNITED STATES CONSULATE,
Basle, Switzerland.

I, John Enddich, U. S. Counsel, do certify that the foregoing deposition of Urs Joseph Hotzher was taken and was read to and subscribed by him in my presence, at the time and place and in the actions mentioned in the captions, the said Urs, Joseph Hotzhen being by me first sworn to state the truth, the whole truth
81 and nothing but the truth in his evidence in said action, and his statement being reduced to writing by me, in his presence.

Given under my hand, this sixth day of February, 1860.

[SEAL.] JOHN ENDDICH,
U. S. Counsel.

Peter Muller.

The deposition of Peter Muller, taken on the day and year, and between the hours afs'd, to be used as evidence on behalf of def'ts in the foregoing actions. The deponent, being first sworn, deposeth:

To the first interrogatory: The dec'd, Peter Yaker, is no doubt the Peter Jecker I knew well.

To the 2 interrogatory he saith: He went to America in April, 1831.

To the 3rd interrogatory he saith: Jecker.

To the 3rd interrogatory he saith: I knew the father, but not the mother; the father's name was Peter Jecker; the name of the mother I don't know; the parents lived in Barschivil; I don't know when the mother died; the father died in 1848.

To the 4th interrogatory he saith: Peter Jecker had one brother, Johann, and one sister, Magdalene; the brother is still living in Barschivil; the sister is dead; since her marriage she lived in
82 Dornach; died in the year 1846.

To the 5 interrogatory he saith: His sister was married to Franz Hann, from Dornach, Solotram. She died and left four children, three sons and one daughter. The latter is also dead. The names of their children are Johano Haven, Franz, and Maria Anna; don't know when the [the] Maria Anna died.

To the 6th interrogatory he said: Two of his sister's children were married, the daughter and the son Haven. The name of the husband of the former, and the wife of the latter I know not. The daughter Maria Ann died and left two children; don't know their names.

To the 7th interrog. he said: No.

To the 8th he said: I know nothing to answer their questions.

To the 9th he saith: Can say nothing about it.

To the 10th he saith: No.

Cross-interrogatories.

To the first cross-interrogatory he saith: My age is 43 years. I live in Barschivil, and am a day laborer.

To the 2nd cross-interrogatory: After all I heard was the Peter Yaker, who died near Versailles, Woodford c'ty, U. S. of
83 America, the same Peter Jecker, from Barschivil, whom I knew well, though I was only 14 years old at the time he went to America.

To the 3rd cross-interrogatories he saith: No.

To the 4th cross-interrogatories he saith: Unknown to me. I heard of letters from Peter Jecker to his relations, but have seen none nor heard them read.

[Witness name in German.]

UNITED STATES CONSULATE,
Basle, Switzerland.

I, John Enddich, United States counsel, do certify that the foregoing deposition of Peter Muller was taken and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the captions, the said Peter Muller, being by me first sworn to state the truth, the whole truth, and nothing but the truth, in his evidence in said action, and his statements reduced to writing by me in his presence.

Given under my hand this sixth day of February, 1860.

[SEAL.] JOHN ENDDICH,
U. S. Counsel.

84 *Jacob May.*

The depositions of Jacob May, taken on the seventeenth day of February, in the year 1860, between the hours of 10 and 11, a. m., to be used as evidence in behalf of the defend'ts in the foregoing actions.

The deponent, being first duly sworn, deposeth to the 1st interrogatory: Yes; I knew a Peter Jecker, and believe him to be the Peter Yaker, who died near Versailles, Woodford c'ty, Kent'y, United States of America

To the 2 interrogatory he said: Anno, 1831, in the spring.

To the 3d interrogatory he saith: Jecker.

To the 3d interrogatory he said: I only know the father not the mother; know that they lived in Barschivil. The time they died I don't know.

To the 4th he saith: Peter Jecker had a brother and a sister; the brother's name is Johann, and of the sister, Magdaline; the brother always lived in Barschivil, and the sister, since her marriage, in Dornach; the later died in Eastern, in the year 1846.

To the 5th he saith: The sisters married Franz Haner, from Dornach; she is dead and left four children, Haven, Johan, Frantz, and Maria Annie. The sons all are still living, but the daughter died in spring 1853.

85 To the 6th he saith: Two children of Peter Jecker's sisters have married. The son Haven was married to Annie Maria

Gassen, from Dornach, and the daughter to Joseph Rumple, from there. The daughter is already said died; she left two children, called Johnna and Jacob.

To the 7th interrogatory he saith: No.

To the 8th interrogatory he saith: I knew of two letters from Peter Jecker, from America, to the father and brothers, and can remember the contents of same, but not how he signed his name.

To the 9th interrogatory he saith: The letters were addressed to Barschivil; I knew no more to answer to this question.

To the 10th interrogatory he saith: No name but John who always lived in Barschivil, and Peter who died in America.

Cross-interrogatories.

To the 1st interrogatory he said: My age is 67 years; I live in Dornach, and follow the trade of basket maker.

To the 2nd cross-interrogatory he saith: The Peter Yaker, in question, is, as I believe, no body else but the Peter Jecker, whom I knew well.

To the 3rd cross-interrogatory he saith: No, neither I, my, family, nor relations.

86 To the 4th cross-int'y he saith: The little document No. 3, is known to me have nothing to attach.

[Witness name in German.]

UNITED STATES CONSULATE,
Basle, Switzerland.

I, John Enddich, United States counsel, do certify that the foregoing deposition of Jacob May, was taken, and was read and subscribed by him in my presence, on the seventeenth of Febuary, 1860, at this place; and in the action, mentioned in the captions, the said Jacob May, being by me first sworn to state the truth, the whole truth, and nothing but the truth in his evidence in said action, and his statements being reduced to writing by me, in his presence. The cause of the late date of this deposition was occasioned by want of time on the day the others were taken, and no other time having been found convenient.

Given under my hand this seventeenth day of Febuary, 1860.

[SEAL. JOHN ENDDICH,
U. S. Consul.

87 These depositions were on one side written in German language, and translated on the other side of the page. I have copied only the translations. The name of the witnesses in German.

88 Woodford Circut Court.

Depositions of Johannes Jecker, &c.

JANE YAKER, plaintiff, *against* McGAY, JOHANNES YEKER, HAVER Haner, Johann Haner, Franz Haner, Joham and Jacob Rumpel, heirs and legal representatives of Peter and Maria Ann Yaker, dec'd, otherwise called Jecker.	Petition in equity.

The deposition of Johannes Jecker, taken on the 18th day of June, 1861, at Basle, between the hours of 1 and 6 p. m.

The deponent, being duly sworn, deposeth:

To the interrogatory he saith: My brother Peter Jecker, or as he afterwards wrote his name Yaker, left but a few pieces of land at his departure for America, a little above two duckats, valued—378 old francs. (Document E.) Besides these lands, he left nothing; no land, no lots, houses, furniture, plate, etc.

To the second interrogatory he saith: My brother gave me the use of said pieces of land, on the condition of paying the interest of a debt of 180 francs he was owing on the land to Mrs. Spinlihaur, of Floe, and to Fidel Fast Mier, of Barschivil and for paying taxes; I thus used the land up to the year 1851. In that year the Orphans' Court of Barschivil took charge of it, and leased it for fifteen francs per annum.

To the 3 interrogatory he saith: My brother Peter made over his share of property to me and my sister Magdalina, married to Haner, for 800 old or 1,142-85 francs, new standard, which sum was paid over to him by our father from the proceeds of land which was sold for the purpose, as will appear from official documents forwarded to Counsel Schwarz, at Louisville, Kentucky, and which have been, as
89 may be supposed, presented to the court. See also doc'ts A & B.

To the 4th interrogatory he saith: My mother's property was little; the whole property of my parents, divided between me and my sister or her heirs, amounted to 1,388 05-100 francs, (new.) We should have received, in the whole, 2,195 75-100, but we lost an action against our stepmother, to the amount of 805 05-100 new francs. I annex herewith documents C & D. which prove the property for itself, but I have nothing at hand about the lost action. I could, however, procure it.

To the fifth interrogatory he saith: On the contrary, as appear from above, I can no more about the amount of the property at the time of the death of my parents.

To the sixth interrogatory he saith: Though I have given no notice to the plaintiff, as to property possessed by my brother here, being out of my hands, and under administration of the Orphans'

Court of Barschivil the last ten years. I never had the intention of concealing the same. By our laws no control or right of such property can be had as long as other claims exist. It must have been known to the authority here that the widow of my deceased brother had certain claims on the few pieces of land, and they would have been secured to her.

[Signed in German. Cl'k.]

The deposition of Haven Haner, taken on the eighteenth day of June, 1861, at Basle, between the hours of 1 to 6 p. m., to be read as evidence on behalf of plaintiff in the foregoing action.

The deponent, being first duly sworn, deposeth:

90 To the first interrogatory, saith: My uncle Peter, at the time he went to America, left nothing but five small parcels of land, to the value of about 385 old, or 550 new francs.

To the second interrogotary he saith: Johannes Jecker had these lands in use, up to 1851, for paying interest on a debt thereon of 180 fr'cs, and paying taxes.

To the third interrogatory he saith: My uncle sold his share of the property coming to him from his father to Johannes Jecker and my mother for 800 old francs.

To the fourth interrogatory he saith: I don't know particulars about these.

To the fifth interrogatory he saith: The total property of my uncle's father, which was divided between Johannes Jecker and my mother, was 1,388 new francs.

To the sixth interrogatory he saith: My share, and that of my sister's and brother's, in the land in question, is so very near insignificant that I cared very little about it; it never came into my mind to conceal the property from anybody.

[Signed in German. Cl'k.]

The deposition of Joham Haner, taken on the eighteenth day of June, 1861, at Basle, between the hours 1 & 6 p. m., to be read as evidence on behalf of plaintiff in the foregoing action.

91 The deponent, being first duly sworn, deposeth:

To the first interrogatory he saith: My uncle Peter Yaker left, at his departure for America, nothing but five pieces of land.

To the second interrogatory he saith: I know nothing about that.

To the third interrogatory he saith: I heard it say that Peter Jecker had sold his share, but I know no particulars.

To the fourth interrogatory he saith: Know nothing about it.

To the fifth interrogatory he saith: This is impossible.

To the sixth interrogatory he saith: I only know that five small parcels of land belong yet to Peter Jecker; I have no ill intention towards those who have just claims to it.

[Signed in German. Cl'k.]

The deposition of Franz Haner, taken on the eighteenth day of June, 1861, between the hours of 1 & 6 p. m., at Basle, to be read as evidence on behalf of plaintiff in the foregoing action.

The deponent, being first duly sworn, deposeth:

To the first interrogatory he saith: My uncle left but some small pieces of land within the community of Barschivil. I know of nothing else he had left.

To the second interrogatory he saith: I only know that Johannes Jecker had these lands for some time in use. I can answer nothing else to this interrogatory.

To the third interrogatory he saith: I can answer nothing
92 to this interrogatory; I was not born at the time my uncle left.

To the fourth interrogatory he saith: Neither can I answer this interrogatory.

To the fifth interrogatory he saith: I know that my mother's part of the property of her parents was small; how much it amounted to I cannot say.

To the sixth interrogatory he saith: No.

[Signed in German.]

The deposition of Joham Mimznizer, business-man of Dornach, the newly appointed guardian of the children of Maria Anna Rumple, whose maiden name was Haner, taken on the eighteenth day of June, 1861, between the hours 1 & 6 p. m., at Basle, to be read as evidence on behalf of plaintiff in the foregoing action.

The deponent, being first duly sworn, deposeth:

To the first interrogatory he saith: He left some land, worth about 500 new francs; except the sum of acquiantance, he had no other property.

To the second interrogatory he saith: He left only the above land, which was cultivated by his brother Johannes, in consideration of paying the interest of a debt of Peter Jecker on said land; afterwards the land was taken in charge by the Orphans' Court of Barschivil.

To the third interrogatory he saith: Peter Jecker sold his share of his parental property shortly before his departure to his brother and sister, and it was paid to him 800 old francs, from proceeds of land which was sold; this proceeding was concluded at the chancery of Dornach.

93 To the fourth interrogatory he saith: The property that was given to the children, Johannes and Magdalena, during the lifetime of Peter Jecker's father, amounted to about 900 old francs. After the death of the father there was found a property of 500 old francs, but that amount came not into the possession of the above Johannes and Magdalenna, as they lost an action which was brought against their claim thereon.

To the fifth interrogatory he saith: Peter Jecker owned nothing but the 800 francs, for which he sold his share in his father's estate, which money he took along to America, and the above-mentioned peices of land.

To the sixth interrogatory: Though no information was given to the widow Yaker, as to the small pieces of land, none of the persons interested here had the intention to usurp the same, being besides entirely under control of the authority.

[Signed in German. Cl'k.]

UNITED STATES CONSULATE, *Basle.*

I, John Enddich, consul of the United States of America, at Basle, do certify that the foregoing deposition of Johannes Jecker, Haver Haner, Johann Haner, Franz Haner, and Johann Munzinger, the recently appointed guardian of Johann and Jacob Rumple, were taken and were read to and subscribed by them in my presence, at the time and place and in the action mentioned in the caption, the said Johannes Jecker, Haver Haner, Johann Haner, Franz Haner, and Johann Mumzinger, being by me first sworn to state the truth, the whole truth, and nothing but the truth in their evidence in said action, and their statements being reduced to writing by me in their presence.

Given under my hand and seal this eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty-one.

[SEAL.] JOHN ENDDICH, *U. S. Counsul.*

94 *Com'r's report.—Filed April* 5, 1861.

COMMONWEALTH OF KENTUCKY
vs.
DEAN MCGEE, administrator, &c.

To the judge of Woodford County Court:

Your commissioner makes the following report: By reference to the settlement of the administrator, it will be discovered that he is charged with the sum of $13,609 25, and credited by $2,439 31, leaving balance against him of $11,169 99. In the settlement of administrator before the commissioner he has filed vouchers for money paid, amounting to 26 50, which, deducted from $11,169 94, leaves $11,143 44; he also reports two notes against Luke P. Blackburn, which he has not been able to collect, Blackburn contending that he paid them, and holds a receipt for the same. Of the property thus coming into the hands of the administrator, $3,156 32 was paid by the Commonwealth to the estate, the value of the three negroes executed for the murder of Yeaker; the purchase of the negroes, as made by Mrs. Yeaker, (leaving out the boy Morton, who was afterwards sold by her for $1,325.) amounted to $4,495; the same negroes were valued December 13, 1860, by W. H. Graddy and Joel W. Swyman, at $6,950.

Respt. reported.

GEO. T. COMTON, *W. C. W. C. C.*

95 *Dean McGee, administrator of Peter Yarker, dec'd, in account with said estate.*

DR.

1853.		
Sept. 21.	To amount of sale bill on a cr. of 12 months	$,974 40
1854.	Albert Searce note	100 00
Jan'y 1.	H. Bowman note	49 00
	Isham Bailey note	3 50
	Geo. W. Nash note, $2 50; J. Hackney note, $5 33	7 83
	J. R. Stockdell, notes	3 80
	L. B. Blackburne and int., $149 00	32 80
	George Dawson's note	60 00
	Additional inventory by the administrator	3,156 32
	Interest on $10,322 54 to date	827 40
	Debits	$13,609 25
	Credits	2,430 94
	Amount on hand	$11,169 94

CR.

1853.		
July 1.	Cash pd. coroner (Atwell) for holding inquest	$6 50
	Fee paid M. C. Johnson, att'y, 2	5 00
	Amount pd. S. Atwell, 3	5 00
	G. W. Oliver, 4	2 50
	G. W. Carter, 5	13 18
	W. Allen, crying sale, 6	8 00
	Carter and Thompson, 7	30 00
	Cornwall & Brother, 8	475 00
	W. C. Cleaveland for the year 1853, 9	48 00
	Amount town tax pd. A. L. Thornton for the year 1853, 10	10 20
	Amount town tax paid W. S. Cleaveland for year 1852, 11	48 00
96	Acc. pd. W. F. Shurlock, 12	45 37
	Am't fee paid T. F. Marshall for defending Arch & Alfred, 13	100 00
	Am't fee pd. Sam for defending Warner, 14	50 00
	A. G. Scearce, 15	5 85
	fee paid W. R. Smith in part, 16	7 50
	account pd. D. McGee, 17	73 30
	tax pd. sheriff of Jessamine co. for 1856, 18	37 00
1854.		
Apl. 9th.	Note and interest pd. J. H. Lowery, Exet & Co., of R. W. Davenport, 19	891 46

	For bill clerk, Woodford, Circuit Court, pd, 20	2 35
	For sheriff of Jessamine county State tax for 1855, 21	8 50
	For sheriff of Woodford county, State tax for 1854, 22	22 30
	For acc. pd. Leonard & Muntell, 23	126 00
	For printing bill of sale, B. B. Taylor, 24	3 50
	For fee bill pd. sheriff of Woodford co. in part, 25	1 00
	For acc. pd. Ed. W. Scott, 26	42 00
	Geo. W. Taylor, 27	5 00
	For taxes pd. sheriff of Woodford for the year 1853, 30	52 40
	For acc. pd. Dr. Wm. A. Terrill, 28	10 00
	Wm. Strobridge for tombstones, 29	75 00
	For execution paid A. L. Thornton, 31	52 55
	For fee bill pd. clerk Woodford County Oourt, 32	33 78
	For judges fee for making this settlement, per affidavit	3 50
	For clerk's fee for recording same	1 50
97	Fee, commission on $2,301 24 cts., at 6 pr. cent, (disbursed)	138 07
		$2,439 31

I, R. C. Graves, presiding judge of the Woodford County Court, have this day completed a statement and settlement of the accounts of Dean McGee, administrator of the estate of Peter Yager, dec'd, having been two days employed in the same, and find them as stated, leaving in the hands of said administrator the sum of eleven thousand one hundred and sixty-nine 94-100 doll., ($11,169 94.) all of which is reported to court. Witness my hand this 12th day of January, 1858.

R. C. GRAVES, *P. J. W. C. C.*

MARCH, COUNTY COURT, 1858.

STATE OF KENTUCKY, *Woodford County, sct*:

The foregoing settlement of the accounts of Dean McGee, adm'r of Peter Yager, dec'd, having been returned to the last court, and laid over the time required by law, without exception or objection, is now examined, approved, and ordered to record.

Attest:

HERMAN BOWMAR, JR., *C. U. C. C.*

A true copy. Attest:

HERMAR, JR., *C. U. C. C.*
By D. M. BOWMAR, *D. C.*

98 STATE OF KENTUCKY, *Woodford Circuit Court:*

I, Swift Darneal, cleark of the Woodford Circuit Court, do hereby certify that the foregoing eighty-eight pages contain a full, true, and complete transcript of the record and proceedings had in the cause between the parties therein mentioned, as fully as they remain of record in my office.

Given under my hand, as clerk of said court, this 4th day of February, 1867.

SWIFT DARNEAL, *C. W. C. C.*

STATE OF KENTUCKY, *Court of Appeals:*

I, Alfred Hensley, commissioner of the Court of Appeals of Kentucky, do certify that the foregoing record is a full, true, and complete transcript taken from the original papers now on file in the office of the clerk of the Woodford county, (Kentucky,) Circuit Court, and that I have compaired and examined both.

ALFRED HENSLEY,
Commissioner.

99 And afterwards, to wit, on the said 5th day of February, 1867, the following order was entered in this cause:

Came R. A. Buckner, esq., and moved the court to spread the opinion of said court in said cause on the records of this court as part of said record, which copy of opinion he presented; and the court being sufficiently advised, it is ordered that said opinion be entered on the order book of this court, which is done, and thereupon the appellants prayed an appeal to the Supreme Court of the United States, which is granted.

The following is a copy of the opinion referred to in the above order:

100 STATE OF KENTUCKY, *Court of Appeals:*

YEAKER'S HEIRS, appellant,
vs.
YEAKER'S HEIRS, appellees.
} Appeal from the Woodford Circuit Court.

JUNE 23, 1862.

The court, being sufficiently advised, delivered the following opinion herein, to wit:

Peter Yeaker, a native of Switzerland, many years ago removed to and became a naturalized citizen of the United States. He died in Woodford county, in this State, in July, 1853, the owner of a considerable estate in said county, consisting of lands, slaves, and personalty. He left a widow, a native of this county, but no children; and all of his kindred, at the time of his death were, and so far the record shows, continued to be foreigners and citizens of Switzerland.

In 1859 proceeding commenced for a sale and distribution
101 of the estate between the widow and kindred of the intestate,

and the circuit judge, having decided that the latter were not entitled to any part of the realty, they have prosecuted this appeal. At common law, an alien could not inherit land, and such has been and is still the law in Kentucky, except so far as it has been modified by statute. It is determined at an early day by this court, that aliens could not inherit land in this State, (Hunt *vs.* Maurice Hardin, 61; White *vs.* White, 2, Met. 187.)

By an act of 1800, (Morehead & Brown's Digest, 1 vol., 112,) an alien friend, residing in this State two years, was entitled to receive, hold, and pass any right to land within the Commonwealth, during the continuance of his residence, was substantially embodied in the revised statutes, (1 vol. Stanton's, 239,) but as neither of appellants were residents of Kentucky at the time of Yeaker's death, no benefit accrued to them under this statute.

Indeed, it is admitted that unless they can claim under certain treaty regulations between the foreign States, of which they
102 are citizens, and the United States, the judgment of the Circuit Court declairing the widow entitled to the land cannot be disturbed, as it therefore becomes necessary to consider and determine the scope and effect of the treaties relied on.

The first treaty between the United States and the Swiss confederation, to which we have been referred, was ratified on the 3d May, 1848, and is found in the United States statutes at large for that year.

Among other stipulations, it contains the following:

ARTICLE 2. If, by the death of a person owning real property in the territory of one of the high contracting parties, such property should descend either by the laws of the country, or by testamentary disposition, to a citizen of the other party, who, on account of his being an alien, could not be permitted to retain the actual possession of such property, a term of not less than three years shall be allowed to him to dispose of such property, and to collect and withdraw the proceeds thereof, without paying to the government any other
103 charges than those which in a similar case would be paid by an inhabitant of the country in which such real property may be situated.

By the 3rd article it is provided, that said treaty shall remain in force for twelve years from its date, and further, until the end of twelve months after either government shall have given notice of its intention to terminate the same.

The record treaty seems to have been signed in November, 1850, but was not ratified until November, 1855, (U. S. statutes at large, 1855.) The official proclamation of the President, making it public as law, speaks thus of the treaty, the period of its execution, and the amendments to the same:

Whereas a general convention of friendship, reciprocal establishments, commerce, and for the surrender of fugitive criminals between the United States of America and the Swiss Confederation was concluded and signed by their respective plenipotentiaries, in the city of Berne, on the 25th day of November, 1850, which convention, as subsequently amended by competent authorities of the respective

governments, and being in the English and French language, is word for word, as follows, &c.:

104 The stipulations of their treaty in regard to the subject now under consideration, read thus:

ARTICLE 5. The citizens of each one of the contracting parties shall have power to dispose of their personal property within the jurisdiction of the other by sale, testament, donation, or in other manner; and their heirs, whether by testament or of intestate, or their successors, being citizens of the other property, shall succeed to the said property, or inherit it and they make take possession thereof, either by themselves or by other acting for them, they may dispose of the same as they may think propper, paying no other charges than those to which the inhabitants of the country wherein the said property is situated shall be liable to pay in a similar case. In the absence of such heir, heirs, or other successors, the same care shall be taken by the authorities for the preservation of the property that would be taken for the preservation of the property of a native in the same country, until the lawful proprietor shall have had time to take measures for possessing himself of the same.

105 The foregoing provision shall be applicable to real estate situated within the States of the American Union, or within the canton of the Swiss Confederation, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territories of one of contracting parties should fall a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the State or in the canton in which it may be situated, there shall be, according to the said heir or other successor, such term as the laws of the State or canton will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty, and without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which the real estate may be situated.

If, as is contended by appellants, this last treaty, by relation back from November, 1855, the day of its exchange and ratification

106 by the contracting powers took and became the law of the land from November, 1850, to the day of its date, without regard to the period or periods when the ammendments referred to in the proclamation were agreed upon and adopted, we confess there is difficulty in avoiding the conclusion that appellants, under the articles cited, have an interest to some extent in the real estate of their deceased relative.

The Constitution of the United States, in the second section of article 6, declares that "this Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The treaty between us seem to have been made with due solemnity

between the contracting parties, adopted and notified by the proper authorities, and proclaimed as the law of the land by the
107 President. Its provision, with regard to real estate, appear to have been carefully drawn with an eye to the rights of the several States and their local regulations respecting such property within our boundaries, and give to the subjects of the Swiss confederation only the share of the proceeds of the realty, when, by the laws of any State, they are forbidden from holding the realty itself.

It may be said to be the well settled doctrine in relation to treaties, that, as to the government's making them, they take effect, not merely from the day of ratification, but from the date of their ex-ratification, unless they contain stipulations to the contrary. (Wheaton's International Law, 336; 1 vol. Kent, 170; 9 Howard S. C. Rep., 148, 289.) But the rule seems to be otherwise where individual rights are to be affected thereby, as settled by the Supreme Court in the case of United States *vs.* Arredendo, (6 Peters, 749,) in regard to that point, which was then raised. The court, in speaking of the treaty then under consideration, say "that it may, and does, relate to its date as respects the rights of either unde it may be un-
108 doubted; but, as respects individual rights in any way affected by it, a very different rule out to prevail" And, in the next sentence, after remarking that the point was not new, state that in regard to individual rights the rule is, that the ratification of the treaty must be deemed its date.

Admitting, however, that the rule contended for in this case was the correct one, it is extremely questionable whether this court could say, in view of the proclamation of the President, supra, that the articles of the treaty relied on by appellants in support of the orginal treaty when signed. It seemed that the original document was signed in Nov., 1850; but it further appears that it was subsequently amended. Now, what amendments were made, or when, does not appear. For aught that appears to the contrary, the very article upon which appellant founds his claim may have been the only amendment made, and they may have been inserted long after Yeaker's death and the accrual of the widow's right. And in view of
109 this state of uncertainty as to when the articles referred to were embodied, it would be difficult to say they were in force when Yeaker died. But this point need not be decided, inasmuch as the treaty, for the reason heretofore stated, so far as Mrs. Yeaker's rights are concerned did not got into effect until 1855, when it was ratified.

The treaty of 1848, in our opinion, is likewise insufficient to uphold appellants' claim to an interest in the property now in dispute, because (1) It may be seriously doubted whether the second article of said treaty intended to confer upon the citizens of the confederation any right to real estate or its proceeds, unless the land was situate within the territories of the United States; that is, the districts of country known as Territories and distinguished from the States.

The language is, "If by the death of a person owning property in the territory of one of the high contracting parties, such property should descend," &c. The doubt mentioned arises, not only because

of the equivocal language thus used to describe the district of
110 country in which the proposed right of succession or inheritance was to be conferred; but also from the fact that the treaty of 1855, in refference to the same matter, is specific and distinct in extending this right to land within the States of the Union, and also in providing for any conflicting State or local legislation, thus showing that the contracting parties themselves deemed the right conferred by the previous treaty as not [not] distinctly extended to the States.

But waiving the question arising upon a proper construction of the language of the treaty in regard to the point suggested, and giving full effect to the provisions as contended for appellants, still they are precluded from the interest claimed by lapse of time.

We have seen, and it is admitted, that by the law of Kentucky, appellants could take no interest in the realty of their deceased relation. It is as well known that by the statutes of decent (1st Stanton Ed., 420,) the widow in this case took the entire real estate. This being the law of this State, it was in full force and effect, so far as the parties hereto are concerned, except as restricted by arti-
111 cle 2 of the treaty of 1848. To the extent of its conflict with said treaty, it must give way, because by the constitutional provision, supra, the treaty is regarded as paramount to the State law. The law of the State refuses all right to appellants at any and all times. The treaty, however, invests them with an interest, provided it is asserted within a period of three years after the right accrues, or rather it forbids any law limiting their right of recovery to less than three years, the effect of which is to permit any restriction by State legislation against such recovery which will not interfere with the right of that period. The State law was therefore so affected by the treaty as to become inoperative for a period of three years, but no further, it being a well-settled rule that when a State law is deemed unconstitutional, because opposed to the Constitution, laws, and treaties of the federal government, it is only void so far as it contravenes this constitution, laws, or treaties. Beyond the three years, the period within which foreigners may claim such interest, there is no convention, because there is nothing forbidding the
112 the State legislation, which denies the right of that class of persons after that time.

It seems to us, therefore, that no error was committed by the Circuit Court in giving all the proceeds of the land to the widow, appellants having permitted more than three years after Yeaker's death to elapse before they brought their suit or asserted their right.

Judgment affirmed.

STATE OF KENTUCKY, *Court of Appeals*:

I, Alfred Hensley, commission of the Court of Appeals, certify that I have examined and compared the foregoiug twelve and a half pages of manuscript, with the printed opinion, of which it purports to be a true copy, and that I find it and the opinion, as contained in Metcalf's Reports, vol. 4, page 34, identical.

ALFRED HENSLEY, *Commissioner.*

113 STATE OF KENTUCKY, *Court of Appeals:*

YEAKER'S HEIRS
vs.
YEAKER'S HEIRS. } Woodford.

DEC'R 3RD, 1867.

This day came G. B. Kinkead, esq., and moved the court to enter of record the mandate or affirmance herein as of date June 23d, 1862, the order book in which the same was recorded having been destroyed by fire; and the court, being sufficiently advised, it is ordered that said mandate be entered, which is as follows:

STATE OF KENTUCKY, *Court of Appeals:*

YEAKER'S HEIRS, appellant,
vs.
YEAKER'S HEIRS, appellee. } Appeal from the Woodford Circuit Court.

JUNE 23, 1862.

The court, being sufficiently advised, it seems to them that there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

A copy. Attest:

A. DUVALL, *C. C. A.*,
By CHAS. HAYDEN, *D. C.*

114 STATE OF KENTUCKY, *Court of Appeals:*

I, Alvin Duvall, clerk of the Court of Appeals of the State of Kentucky, do hereby certify that the foregoing one hundred and three pages contain a full, true, and complete transcript of the record and proceedings had in the cause between the parties therein mentioned as fully as they remain of record in my office.

Given under my hand, as clerk of said court, and the seal of my office, this 6 day of February, 1867.

[SEAL.] A. DUVALL, *C. C. A.*

O

Supreme Court of the United State

UNITED STATES COURT OF CLAIMS.

DECEMBER TERM, A. D., 1868.

—: o :—

JOHANNES JECKER ET AL.

vs.

DEAN MAGEE ET AL.

No. 205.

—: o :—

BRIEF FOR PLAINTIFFS IN ERROR.

This is a writ of error under the 25th section of the judiciary act, to reverse a decree of the Court of Appeals of the State of Kentucky.

THE CASE.

Peter Yeaker, a native of Switzerland, and a naturalized citizen of the United States, died in July, 1853, seized of certain lands in the State of Kentucky, leaving a widow and without children. His heirs-at-law, the plaintiffs in this case, were aliens and citizens of Switzerland.

In February, 1859, the proceedings in the record were commenced, by a petition in equity, in the Circuit Court of Woodford county, Kentucky, by an agent of the State, in the name of the State against the administrator, widow and unknown heirs of the deceased, claiming the lands as escheated to the State, for want of heirs capable of taking.

The widow filed her answer, claiming the land for herself, in default of heirs capable of taking. Rec. 9, p. 9.

The plaintiffs in error subsequently appeared, claiming to be the heirs-at-law of Peter Yeaker, (Rec. p. 10,) and

this fact being established by evidence taken by commission issued on their application, (Rec. pp. 19 and 22 to 35,) they were made parties to the suit, as "the heirs of Peter Yeaker, in Switzerland." Rec., p. 20.

In their petition they claimed "their right of inheritance secured by article 5 of the treaty between the United States and Switzerland, ratified November 8, 1855," to which they particularly solicited the attention of the court.

The decision of the Circuit Court was adverse to the State, and to the heirs-at-law, and decreed the land to the widow, (Rec. p. 20.) And on appeal to the Court of Appeals, the decree was affirmed, (Rec. p. 47,) and the right claimed by the plaintiffs in error under the said treaty were denied them.

The case is thus clearly within the provisions of the 25th section of the judiciary act, and no question can arise as to the jurisdiction of this court.

The Treaty.

There are two treaties bearing upon the case. The treaty of May 3, 1848, provided that if, by the death of a person owning real property in the territory of either of the contracting parties, such property should descend to a citizen of the other party, who, on account of his being an alien, could not be permitted to retain the actual possession of such property, a term of not less than three years should be allowed to him to dispose of such property, and to collect and withdraw the proceeds. 9 Stat., p. 903.

This treaty remained in force till suspended by the treaty concluded between the same contracting parties in November, 1850, and ratified November 8, and proclaimed November, 9, 1855. 11 Stat., p. 587.

The latter treaty, by its 5th article provides as follows:

ARTICLE V. The citizens of each one of the contracting parties shall have power to dispose of their personal property by sale, testament, donation, or in any other manner; and their heirs, whether by testament, or *ab intestato*, or their successors, being citizens of the other party, shall succeed to the said property, or inherit it, and they may take possession thereof, either by themselves or by others acting for them. They may dispose of the same as they may think proper, paying no other charges than those to which the inhabitants of the country wherein the said property is situated, shall be liable to pay in a similar case. In the absence of such heir, heirs, or other successors, the same care shall be taken by the authorities, for the preservation of the property, as of a native of the same country, until the lawful proprietor shall have had time to take measures for possessing himself of the same. The foregoing provisions shall be applicable to real estate situated within the States of American Union, or within the cantons of the Swiss Confederation, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party who, on account of his being an alien, could not be permitted to hold such property in the State or in the canton in which it may be situated, there shall be accorded to the said heir or other successor such term as the laws of the State or canton will permit, to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty, and without paying the Government any other charges than those which in a similar case would be paid by an inhabitant of the country in which the real estate may be situated.

ARTICLE VI. Any controversy that may arise among the claimants to the same succession, as to whom the property shall belong, shall be decided according to the laws, and by the judges of the country in which the property is situated.

There is no law of Kentucky limiting the period within which alien heirs may dispose of the real estate of their ancestors, nor, indeed, is there any statute of the State recognizing their right to do so.

POINTS.

1st. The constitutional operation of a treaty, enabling alien heirs to take, notwithstanding their alienage, has been repeatedly adjudicated in this court.

Harden *vs.* Fisher, 1 Wh., 300.
Jackson *vs.* Clark, 3 Wh., 2.
Fairfax's Devisee *vs.* Hunter, 7 C., 603, 627.

2d. By the treaty of 1848, the plaintiffs in error had three years from July 30, 1853, (the date of Peter Yeaker's death,) to sell and withdraw the proceeds of the land. This term would have expired July 30, 1856, but before that time, the treaty of 1850 came into operation, and extended the term indefinitely.

There are but two possible constructions of the provisions of the treaty on this point.

First. The construction contended for by the defendants, that the treaty gives only such time as the State statute may expressly allow.

Second. The construction contended for by the plaintiffs, that the treaty gives an indefinite time, subject to such reasonable limitation as the States may impose.

The objection to the construction of the defendants is, that it makes the treaty totally inoperative and illusory—a construction therefore inadmissible.

For if the States by statute allow foreign heirs time to sell and withdraw the proceeds of lands descended, certainly that is a privilege which the States are entirely competent to grant, and no sanction by treaty is necessary; the right is perfect without treaty. If on the other hand the States give no such time, then, according to the defendants' construction, the foreign heir takes nothing under the treaty. The right, then, according to that construction, depends solely on the State statute.

But on the other hand, it is clear that the treaty meant to confer a valuable right on Swiss subjects. The treaty

of 1848 had conferred a valuable right, and there is no reason to believe the treaty of 1850 was intended to be less effective and beneficial; certainly it was not intended to be wholly illusory.

The treaty clearly contemplates no legislation by Congress in respect to title to lands lying in the several States of the Union, since Congress has no power on that subject. But we have seen that the treaty engages that the right in question "shall be accorded." This could only be by the operation of the treaty itself as the supreme law of the land. It follows then that by force of the treaty itself the right was accorded, and no term is designated within which it shall be asserted. This is left to the discretion of the State or canton where the land lies. But this discretion must necessarily be exercised in such manner as not to defeat the treaty; the limitation must leave a reasonable time within which the right may be claimed. In other words it must recognize the right and impose no conditions on the remedy which would defeat the right. The language of the treaty cannot be construed to import that there exists in the States any power to defeat or impair the right expressly and definitely granted by the treaty. What is recognized is simply a discretion over the period within which the right must be asserted; in other words a power over the remedy which must be exercised by the States in good faith, and consistently with the fair and effectual operation of the treaty. The reasoning of this court in the cases of Green *vs.* Biddle, 8 Wh. 1, 75, 84, and Bronson *vs.* Kenzie, 1 How'd, 311, furnishes an apt and conclusive analogy for the present case.

3d. *The language of both treaties has relation to all lands lying within the territorial limits of the high contracting parties respectively, without reference to any internal or municipal divisions.*

In the one treaty the language is "territory" in the

other "territories" the meaning of both is the same. There can be no foundation for the idea that by the word "territories" was meant a political organization distinct from that of the States of the Union. For the stipulation is mutual and reciprocal. It applies to lands within the Swiss Confederation equally to lands within the American Union, and it is not pretended that the word "territory or territories," in that sense, could have any application to any portion of the Swiss Confederation.

Conclusion.

It is submitted that the right secured by the treaty to the plaintiffs in error, was claimed within a reasonable time, and the decree of the Court of Appeals of Kentucky should be reversed.

J. M. CARLISLE,
J. D. McPHERSON,
For Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

JOHANNES JEEKER, XAVER HAVER, JOHANNA HAVER, FRANZ HAVER, JOHANN RUMPEL, AND JACOB RUMPEL, HEIRS OF PETER YAGER OR YAKER, DECEASED, PLAINTIFFS IN ERROR,

vs.

Brief of **PORTER & BECK**,
For **DEAN MAGEE**, Def't in Error.

DEAN MAGEE, ADMINISTRATOR, AND JANE YAGER, WIDOW OF PETER YAGER OR YAKER, DEC'D.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

Farmers' Home Journal pr., Lexington.

SUPREME COURT OF THE UNITED STATES.

Brief of PORTER & BECK, for DEAN MAGEE, Def't in Error.

JOHANNES JEEKER, *et al*, PLAINTIFFS IN ERROR,

Against

DEAN MAGEE, ADMINISTRATOR, *et al.*

Peter Yager, or Yaker, died in Woodford county, Kentucky, in July 1853, intestate and childless, leaving a widow, Jane Yager, who was a resident and citizen of the State of Kentucky, and an estate of both realty and personalty in said county and State. He left as next of kin, certain persons, who were foreigners, and citizens of Switzerland, and who are plaintiffs in error in this cause.

If these persons were capable of inheriting under the laws and constitution of the United States, or of any treaties made in pursuance thereof, or under the laws of Kentucky, they would be eutitled to the property of which the intestate died seized and possessed, subject to the rights to which the widow would be entitled by law. These kindred of Peter Yaker, by a proceeding had in the Circuit Court for said county and State, asserted their right to said property, and by the judgment of that court recovered one-half of the personal estate (including slaves) after paying the costs of administration, but it was adjudged that they had no right to any of the land, the title thereto having, at the death of Peter Yaker, become vested in his widow. From this judgment an appeal was taken to the Court of Appeals of Kentucky, and by that court the judgment was affirmed, of which the plaintiffs in error complain now.

It will, we suppose be conceded that the judgment so far as it relates to the personality is correct. It is provided in the Statutes of Kentucky (1st vol. Stanton's Revised Statutes, chap. 30, sec. 11, page 423), that "when any person shall die intestate as to his personal estate, or any "part thereof, the surplus, after payment of funeral expenses, charges of "administration, and debts, shall pass and be distributed among the same "persons, and in the same proportions, to whom and in which real estate "is directed to descend, except as follows: 1st, The personal estate of an "infant shall be distributed as if he had died of full age. 2d, An *alien*

"may be a distributee as though he was a citizen. 3d, If the intestate "leaves issue his widow shall have one-third, and if *no issue, one-half* of "such surplus."

Under this statue the alien kindred of Peter Yaker can inherit the personality as if they were citizens, and the widow (the deceased leaving no issue) was entitled to one-half and the plaintiffs in error to the other, which was adjudged to them by the court.

The rights of the parties in the land left by Peter Yaker is a more difficult question, and this difficulty grows not out of the laws of Kentucky (for they are clear), but out of the construction to be given to the treaties made between the United States and Switzerland.

If an alien could at the time of the death of Peter Yaker inherit lands in Kentucky, it would be under the provisions of some statute of said State for he could not at common law. The Court of Appeals of Kentucky have in several instances determined that an alien could not inherit land in that State. Hnnt vs. Maurice, Hardin, 61; White vs. White, 2 Metcalf, 187.

The rule of the Common Law as to aliens was at an early day relaxed in Kentucky by an act of the Legislature which gave to that class of persons not being enemies, who had actually resided in the State two years, the right *during their residence, after that time* to receive, inherit, hold and pass by descent, devise, or otherwise any interest in real or personal property in the same manner as if they were citizens of the State. (1st vol., Revised Statutes of Kentucky, chapter 15, article 3, section 1, page 239).—The plaintiffs in error never having resided in that State, could not, of course be benefitted by that provision; nor could they derive any benefit from the further modificationof the Common Law, by an amendment to that act approved March 21st, 1861—(Myers suppliment to Revised Statutes, page 85-6) the same having been made after the rights of the widow had, under the laws of Kentucky become vested.

If, then under the laws of Kentucky, the alien kindred could not inherit any interest in the land, they must look to some other source from which they can deduce title or interest. This interest or title they claim is given them by the treaties made between the United States and Switzerland, which treaties are, as we admit, if made "under the authority of the United States, the supreme law of the land, and the judges in every State are bound thereby, anything in the Constitutions of any State to the contrary notwithstanding.

The first treaty between the United States and Switzerland was ratified on the 3d. of May, 1848; the second was *made* in November, 1850, (near three years before the death of Peter Yaker) but *not ratified till* November, 1855, more than two years after said Yaker's death.

By the terms at the treaty ratified in May, 1848, it is provided by article 2d, that, "if by the death of a person owning real property in the *Territory* "of one of the high contracting parties, such property should descend either "by the laws of the country or by testamentary disposition to a citizen of "the other party, who, on account of his being an alien, could not be "permitted to retain the actual possession of such property, a *term* of *not* "*less than three* years shall be allowed to him to dispose of such property, "and to collect and withdraw the proceeds thereof without paying to the

"government any other charges than those which in a similar case would be "paid by an inhabitant of the country in which such real property may "be situated."

We assume that by the terms, of this treaty, that it only applies to real property situated in the *Territory* of one of the contracting parties, and not to such property as is situated in any State of this Union; that the word territory was in that treaty used in its technical sense as contradistinguished from a State; that it was intended to apply to that part of the country over which Congress has the power, under the Constitution. "to dispose of and "make all needful rules and regulations respecting." &c., &c., and was not intended to embrace any of the States where the right existed to prescribe by Legislative enactment the mode of the descent and distributiou of estates, or to specify the class of persons capable of inheriting. In this interpertation we are sustained by the language of the second treaty, which makes the stipulations of that treaty applicable to the citizens of each of the contracting parties, and extends its provisions to real estate situated *within the States* of the American Union. In one treaty (the first) the real property has to be situated in *the Territory*. in the other the right is given to the citizen of either of the contracting parties to dispose of the property by sale, testament, &c., and to inherit *in any of the States*.

If we should be wrong, however, in this construction of the treaty of 1848, yet the aliens, who are plaintiff in error here, can derive no benefit from it, because the time limited by the treaty in which they were to assert their rights had elapsed before they made any claim, and they are consequently barred, three years being allowed "to dispose of such property, and to collect and withdraw the proceeds thereof, (article 2d,) when on account of their being aliens they could not (as in this case under the laws of Kentucky) retain the actual possession of the proerty. Peter Yaker died in July, 1853,—the suit was brought 28th, of February, 1859, the alien kindred asserted their claims, Oct. 30, 1859, which was more than *six* years after the death of the intestate.

The 5th Article of the treaty made in 1850, and ratified in 1855, is (we apprehend) the one on which the plaintiffs in error base their claims, and reads as follows:

"Article 5, The citizens of each of the contracting parties shall have power to dispose of their personal property within the jurisdiotion of the other, by sale, testament, donation, or in any other manner; and their heirs, whether by testament or ab intestato, or their successors, being citizens of the other party, shall succeed to said property, or inherit it, and they may take possession thereof either by themselves or by others acting for them; they may dispose of the same as they think proper, paying no other charges than those to which the inhabitants of the country wherein the said property is situated shall be liable to pay in a similar case. In the absence of such heir, or heirs, or other successors, the same care shall be taken by the authorities for the preservation of the property that would be taken for the preservation of the property of a native of the same country until the lawful proprietor shall have had time to take measures for possessing himself of the same."

The foregoing provisions shall be applicable to real estate situated

within the *States* of the American Union, or within the Cantons of the Swiss Confederation, in which foreigners shall be entitled to hold or inherit real estate. "But in case real estate situated within the territories "of one of the contracting parties should fall to a citizen of the other "party, who, on account of his being an alien, could not be permitted to "hold such property in the State or in the Canton in which it may be sit- "uated, there shall be accorded to the said heir or other successor such "term as the laws of the State or Canton will permit to sell such property; "he shall be at liberty at all times to withdraw and export the proceeds "thereof without difficulty and without paying to the government any "other charges than those which, in a similar case, would be paid by an "inhabitant of the country in which the real estate may be situated."

This treaty is more comprehensive than that of 1848, and to our minds presents more difficulty especially if it should be determined by this court that it became the law from its date, notwithstanding its ratification did not take place till 1855. That the treaty was after its date, and before its ratification and exchange, amended is apparent from the proclamation of the President. What these amendments were, or when made, whether before or after the rights of the widow of Peter Yaker accrued, we cannot say, as we have not access (being residents of and now in Kentucky) to the original papers, and we can only say, as was by the Court of Appeals of Kentucky, that, "for ought that appears to the contrary, the very "article upon which appellants found their their claim may have been "the only amendments made, and they may have been inserted long after "Yaker's death and the accrual of the widows rights."

It has been held that a "treaty binds the contracting parties from its "conclusion, and that is understood to be from the day it was signed." (1 Vol. Kent's Com. 170; 9 Howard S. C., Rep; 148. 289). This doctrine is well settled, we believe, at least so far as the *contracting* parties—the *Governments*—making the treaties are concerned. But the rule so far as individual rights are to be affected is different (United States vs. Arredendo, 6 Peters, 749), and for this distinction there seems to us a good reason.

A treaty is in its nature a contract between two nations, not a legislative act, but in the United States a different principle is established; our Constitution declares it to "be the law of the land." Foster & Elam vs. Nulson, 2 Peter's Reports, S. C. 314.)

It is clear that to give a treaty the force of a law it must be made under the authority of the United States. A treaty to be valid must be made by and with the consent of the Senate, provided two-thirds of the Senators present concur. Until consent is given by the Senate no one is bound by it as a law; it is until then subject to amendment or modification, and can be rejected entirely. It is true that when ratified it relates back to the day that it was signed so far as the Governments making it are concerned, but still it is not the law of the land so far that private rights which accrued and vested before it was ratified, (or in other words before it was a law) can be by it divested.

There was no treaty which had *become a law* at the time Peter Yaker died which gave to plaintiffs in error any interest in the land; the widow's

right was complete and perfect under the laws of Kentucky in 1853, and to construe the law so as to make the ratification of the treaty relate back to its signing, thereby divesting the widow of her vested rights, would be making the treaty a law before it really became such; certainly the Courts of the country would not countenance such a construction of the effect of a ratification of a treaty. It would be taking private property under the pretense of a law when in fact, no law existed at the time to authorise it.

But in addition to this, even if it be conceded that the ratification of the treaty in 1855 gave it a retroactive effect to its date as to private and vested rights, we contend that the plaintiffs in error, being non-resident aliens, had, by the terms of the treaty, no rights in or concerning real estate in Kentucky.

The language of the treaty is, that "the foregoing provisions" (referring to rights of aliens under Article 5), "shall be applicable to Real Estate "situated within the States of the American Union, or within the Cantons "of the Swiss Confederation, *in which foreigners shall be entitled to hold or "inherit real estate.* But in case real estate situated within the Territories "of one of contracting parties should fall to a citizen of the other party, "who, on account of his being an alien, could not be *permitted* to hold such "property in the *State*, or Canton, in which it may be situated, there shall "be accorded to the said heir or other successor, *such term* as the *laws of "the State*, or Canton, will permit such property * * * * * *." From this it will be seen that the rights of the alien are expressly subordinated to the laws of the State, or Canton, in which the land may be situated. If he cannot hold or inherit real estate by the laws of the State, or Canton, there is "accorded to him *such term* as the *laws of the State, or Canton will "permit* to sell such property." We contend that if he can by State law neither hold, inherit, nor *sell*, he has no rights which he can assert under the treaty, and applying this rule to this cause, that the plaintiffs in error being non-resident aliens and incapacitated by reason of this, by the laws of Kentucky in force in 1853, from holding, inheriting, or selling, (no term being "accorded to them to sell,") are, on accout of this prohibition of the State law, without remedy, and have no legal ground for complaint.

The concluding part of Article 5 of the treaty, giving the alien liberty to withdraw *and export the proceeds of the sale* without difficulty, and without paying to the *Government* any charges, evidently, and in fact in express terms, applies to the disposition of the proceeds of the sale only, and neither authorizes or stipulates that lands should be held or a sale made or "term accorded" contrary to, or even without the sanction of the laws of the State. If there can be no sale and no proceeds realized, it is clear that all clauses of the treaty relating to "proceeds" only are inoperative and of no effect.

JAMES B. BECK,
THOMAS P. PORTER,
Attornies in Error